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**THE**  
**PHILOLOGICAL AND BIOGRAPHICAL**  
**WORKS**  
**OF**  
***CHARLES BUTLER,***  
**ESQUIRE,**  
**OF LINCOLN'S-INN.**

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**IN FIVE VOLUMES.**

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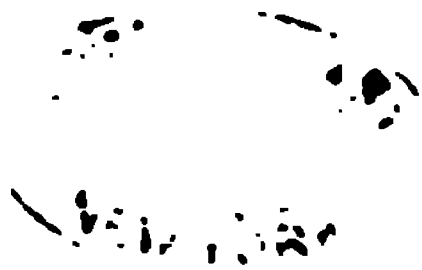
**VOL. II.**  
**CONTAINING**  
**GERMANIC EMPIRE,**  
**HORÆ JURIDICÆ SUBSECIVÆ,**  
**&c.**

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## ERRATA TO GERMANIC EMPIRE.

Page 6, line 6, *for Germaniacis-Rhenana, read Germania cis Rhenana.*

33, last line, *for Erancia, read Francia, . .*

112, line 13, *for his Uncle Ernest, read Ernest the son of Leopold  
the great-uncle of Albert :*

146, line 16, *for reviewed, read viewed*

### *In the Proofs and Illustrations.*

82. line 2, *for Desdeards, read Desdoards*

83. line 24, *for Mason, read Masons*







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REVOLUTIONS.  
OF THE  
GERMANIC EMPIRE.

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PART I.

Comprising the Period, from the General Division of the Roman Empire, between ARCADIVS and HONORIUS, the sons of THEODOSIVS the First, to the Revival of the Empire of the WEST, in the person of CHARLEMAGNE.

395—800.

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I.

1. ON the FINAL DIVISION OF THE A. C  
ROMAN EMPIRE, between the Em-  
perors Arcadius and Honorius, the sons  
of Theodosius the 1st, *the Empire of  
the East*, comprising Thrace, Macedonia,  
Greece, Dacia, Asia Minor, Syria and  
Egypt, was assigned to the former; *the  
Empire of the West*, comprising Italy,

Africa, Gaul, Spain, Noricum, Pan- A. C.  
nonia, Dalmatia and Mæsia, was  
assigned to the latter.

Honorius was succeeded by Valenti-  
nian the third:—nine usurpers followed:  
Orestes was the last of the nine, and  
was succeeded by his son Augustulus. 474

2. In the following year, *Odoacer*,  
*King of the Herulians*, conquered all  
Italy, put an end to the Western Em-  
pire, and was proclaimed King of  
Italy. - - - - - 476

3. Theodoric, King of the Ostro-  
goths, or Eastern Goths, murdered and  
succeeded Odoacer. He became the 493  
founder of the *Ostrogothic Dynasty of*  
*Italian Kings*. From Vitiges, the fourth  
king of this dynasty, Belisarius reco- 536  
vered Rome in 536: It was re-con-  
quered by Totila, it's 7th King, in - 546

4. Narses, a general of the Emperor  
, vanquished Teyas, the son

of Totila; and, with the *title of Pro-* A. C.  
*consul*, ruled Italy for sixteen years. - 553

5. Then Alboin, a Lombard General, conquered all that part of Italy, which extends from the Alps, to a supposed line from the Macra to the Rubicon, the Gallia Cisalpina of the Romans, the Modern Lombardy. His successors subdued the whole of Tuscany, the Neapolitan territory, and the Duchy of Beneventum. This formed *the Lombard Kingdom of Italy*; the usual residence of its Kings, was Pavia.

There were twenty-two Princes of this A. C.  
dynasty. - - - - - 568

6. To preserve the rest of Italy from the invasions of the Lombards, Justin, the immediate successor of Justinian, sent an officer, called an *Exarch*, with imperial command, into Italy. Ravenna was the seat of his government: and his power extended over the whole of that part of Italy, which remained subject to the emperor. It was

divided into different territories, subject to governors, generally called Dukes, who possessed, in their respective districts, both civil and military authority: but all of them were subordinate to the Exarch. What was properly called the Exarchate, consisted of the towns of Ravenna, Boulogna, Imola, Farenza, Forlimpoli, Forli, Césenna, Bobio, Ferrara, Commachio, Adria, Servia, and Secchia, and the castles and lands which belonged to them. The towns of Arimini, Pesaro, Conca, Fano, Sinigalia, Ancona, Umana, Jessi, Fossombrone, Monfetto, Urbino, the territories of Balni, Cagli, Luceoli, Ugubio, and the castles and lands which belonged to them, were called the Pentapolis.\*

\* See the *Dissertatio Chorographica de Italia Medii Ævi*, published by Muratori.

## II.

SUCH were the revolutions of the Empire of the West—The kingdom of the

Franks now came into notice; but the principal events in the *early history of Germany*, should first be mentioned.

The Ocean, on the north, the Danube, on the south, the Rhine, on the west, and the Sarmatic provinces, on the east, are the boundaries, assigned by Tacitus, to Antient Germany. The invasion of Italy by the Cimbri and Teutones; A.M. their defeat by Marius, in 3909, the 3909 invasion of Gaul by the borderers of the Rhine, under Ariovistus, and their defeat by Julius Cæsar, in 3950, are, almost, the only events 3950 of consequence in the history of Germany, before the Christian æra, of which we have any certain account.

When Cæsar had completed the conquest of Gaul, he divided it into the Aquitanic, the Celtic, and the Belgic provinces; and comprised, in the latter,

all the German provinces on the left side of the Rhine. Augustus separated from the Belgic Gaul, the country between the Meuse, the Scheld and the Rhine, and formed it into a province called the Germaniacis-Rhenana.

In 3995, the famous Arminius or Hermann, at the head of the Cherusci, a people in the neighbourhood of Goslar, massacred Varus and his three legions, at Windfelt, between the Lippe and the A. M. Emms. - - - - - 3995

The third century of the Christian æra, is remarkable for different associations of German tribes, in their common defence, against the Romans.

That of the Alemanni, was formed by the nations between the Rhine, the Mein, and the Lech ;—that of the Francici, by the nations between the Rhine, the Mein, and the Weser ;— that of the Thuringians, by the nations between the Mein, the



Danube, and the Hartz;—and that of the Saxons, by the borderers of each side of the Elbe.\*

\* See d'Anville's *Etats formés en Europe après la chute de l'Empire Romain en Occident*, 4to. Paris 1771, and Mr. Turner's *History of the Anglo-Saxons*, 1 vol. p. 50.

### III.

OF these, upon every account, and particularly for the present subject of enquiry, the *Francic Association* is the most remarkable.

Not long after the beginning of the fourth century, a body of the Franks, under the command of Pharamond, their leader, crossed the Rhine, and founded a kingdom, in that part of Modern France, which lies between the Rhine and the Scheld. Pharamond was their first King; and he gave birth to a line of princes, called Merovingian, from Merovæus his second successor. Clovis, the second in succession to

Merovæus, by several victories, particularly that at Soissons, over the Romans, that at Tolbiac, over the Alemanni, and that at Poitiers, over the Visigoths, conquered almost all Gaul, and the whole of Alemannia. His immediate successors conquered Bavaria, Thuringia, and other parts of Germany. But, in consequence of various partitions, and the civil wars occasioned by them, the kingdom was thrown into confusion.

#### IV.

IN the mean time, *the Popes had risen into consequence.*

1. St. Peter, the first of the Popes, had neither temporal estate, nor temporal power. During the ten persecutions, his successors acquired some moveable and immoveable property, for the support of the altar, and its ministers, and for purposes of charity. The donation of Constantine is a fable; but

his constitution of 321, by which he authorized churches to acquire and hold property of every description, by gift, testamentary donation or purchase, is the real source of the wealth of the church. From him and his successors, the Popes obtained extensive possessions in Italy, Sicily, Dalmatia, France and Africa. In consequence of their descendible quality from Pope to Pope, they were called the Patrimony of St. Peter. Other churches had their respective patrimonies, to which they gave the name of an eminent saint of the district. Thus, the landed property of the church of Ravenna, was called the patrimony of St. Apollinaris; that of the church of Milan, was called the patrimony of St. Ambrose, and that of the church of Venice, was originally called the patrimony of St. Theodore, her first patron; but, in the ninth century, the body of St. Mark having been brought from Alexandria to Venice, and

the Saint having then been declared Patron of the city, the possessions of her church, were, from that time, called the patrimony of St. Mark.—In this manner, the Popes became Owners of Houses and Farms.

The laws of Constantine and his successors conferred on them, something like a right of civil jurisdiction. This was increased by the circumstances and temper of the times; and thus they acquired the Power of Magistracy.

After Justinian had reconquered Italy, Rome was governed by a duke, who, like the other dukes of Italy, was wholly subordinate to the exarch of Ravenna. Still, as the Popes constantly resided at Rome, their spiritual character, their talents, the use they made of them, and particularly, the sums of money spent by them in public and private charities, in support of the walls and fortresses of the city of Rome, and in maintaining troops for its defence, endeared them

to the Roman people. This gave them considerable political influence in the city of Rome, and the adjoining parts of Italy. Their exertion of it was always useful, and sometimes necessary for answering the purposes of government; and thus, the Popes became possessed, indirectly, of Temporal Power.

Such was the situation of the Popes, A. C. when Leo the Isaurian, began his attack 720 on Religious Devotion to Images. He issued an edict, for the destruction of them, in every part of his empire. It was received, with universal execration, and occasioned numberless tumults. In Ravenna, it produced an insurrection, of which Liutprand, the king of the Lombards, took advantage, to make himself master of the city; but it was reconquered from him, by the assistance of pope Gregory the 2d and the Venetians; and they restored it to the exarch. The emperor then ordered his

edict to be executed at Rome ; and, on its being opposed by the pope, directed, that the pope should be brought to him, dead or alive. Liutprand offered the pope his protection ; besieged and took some towns of the exarchate, and advanced towards Rome. Equally averse from the emperor and the Lombard king, the people formed themselves into a separate government, under their magistrates, and placed the pope at their head. This proceeding was alike offensive to Liutprand and the exarch ; they agreed to unite their forces, and possess themselves of the A. C. city of Rome. - - - - - 729

In this distress, the pope made repeated applications to the emperor, urging him to abandon his iconoclastic projects, which had alienated the minds of his subjects, and pressing him to send them succours against the Lombards. These, the emperor often promised, but never sent ; and

this made it necessary for the Romans to apply for them to another power.

2. France was the only state from which they could hope for relief; but, from Thierry the 3d, who reigned in 688, France had been subject to a succession of princes, to whom history has given the appellation of the Sluggard Kings.

They enjoyed merely a shadow of royal authority. The mayors of the palace, or, as they are called by the writers of the time, the *Majores domus regiæ*, from being chief officers of the household, had insensibly grown to such a degree of consequence, as to possess the whole civil and military power of the state. They are traced to the reign of Clotaire the 2d; but *Pepin of Heristhall*, of the family of the counts of Ardenne, a country between the Moselle and the Scheld, seems to have been the first of them, who formed the project of usurping the royal authority, and making it hereditary

in his own family. The states appointed him regent of the kingdom: Charles Martel, his natural son, succeeded him in the regency; and assumed the title of Duke and Prince of the Franks.

To him, pope Gregory the 2d made his application; but neither the nature of the application, nor the answer it received, is known. In effect, the pope was left to his own genius to deliver himself and the people, who relied on his protection, from the dangers which threatened them. He succeeded beyond his wishes; he prevailed on Liutprand, not only to desist from his enterprise, but to restore several cities, which he had conquered from the exarchate. Shortly after, he died, leaving one of the fairest characters recorded in history. Anastasius the librarian mentions, that he always exhorted the Romans to remain in their obedience and fidelity to the emperor. Natalis Alexander says of him (Diss. 1.



sæc. 8), “ This most learned pope was not ignorant of the tradition of the fathers, and never deviated from it. They always taught, that subjects are bound to obey their princes, though infidels and heretics, in those things which belong to the rights of the commonwealth.”

Pope Gregory the 2d. was succeeded by pope Gregory the 3d. During his pontificate, the emperor and the kings of Lombardy persisted in their respective projects, against the pope and city of Rome ; and the Lombard king declared war against them. Upon this, the pope finding his applications to the emperor, fruitless, sent a solemn embassy to Charles Martel. It was accompanied by a deputation from the senate and people of Rome ; conferring on him the dignities of patrician and consul. The deputies were honourably received ; but Charles Martel died without giving the pope any effectual assistance. His titles, dignities and

talents, devolved to Pepin, his eldest son. Pope Gregory the 3d died soon after, A.C. and was succeeded by pope Zachary. 741

Matters were now brought to a crisis. On the side of Pepin, the inglorious existence of the Merovingian kings had continued, and the mayors of the palace had exercised all the functions of royalty so long, that, excepting the right, nothing but the name of king was wanting to Pepin. On the side of Zachary, it was evident, that, without instant, powerful and permanent protection, the pope and city of Rome must fall a prey to the kingdom of Lombardy. The protection which Zachary wanted, Pepin could grant: the right to the kingdom and the name of king, which Pepin wanted, Zachary could not confer; but, to a general belief, that Pepin possessed the former, and to his obtaining the latter, Zachary could contribute much. Their mutual wants produced a treaty of mutual assistance. In consequence

sequence of it, Pepin sent two confidential agents to the pope, proposing to him, as a case of conscience, whether, as, in the empire of the Franks, all the Power of Royalty had been so long held and exercised by the family of Pepin, it was not proper, under the existing circumstances, that they should also have the name of king. The pope pronounced that he, who had the power, ought to have the name of king. On receiving the pope's answer, Pepin called an assembly of the states at Soissons; he was unanimously proclaimed king, and enthroned. He was crowned and anointed king by St. Boniface, the bishop of Mentz, a prelate eminent for the holiness of his life ; and, from the extent and success of his missionary labours, beyond the Rhine, called the apostle of Germany.—Thus, ended the Merovingian dynasty, after reigning two hundred and seventy years from the accession of Clovis. Chilperic, the reigning monarch, was shut up in

the monastery of St. Bertin in the city of  
 - St. Omer in Artois: Thierry, his only son,  
 was shut up in the monastery of Fonte-  
 nelles, in Normandy: the father died  
 in 754, the time of the son's death is  
 unknown. A. C.  
750

Pope Zachary did not long survive  
 this revolution; he was succeeded by  
 Stephen the 2d.

On the death of Liutprand, Astolphus, his  
 brother and successor, made himself master  
 of Ravenna, and all the territories of  
 the exarchate and the Pentapolis; and  
 thus put an end to the power of the A. C.  
 Exarch in Italy.     -     -     -     - 752

He then turned his forces against  
 the city of Rome; and avowed his in-  
 tention of making the Romans his subjects,  
 and compelling them to pay him a poll tax  
 of a penny of gold. The pope applied to  
 Constantine, the emperor of Constantinople,  
 for relief; he granted him none, but ordered

him to wait, in person, on Astolphus, to solicit the restoration of Ravenna, the exarchate and the Pentapolis. The pope obeyed; but, being ill received by Astolphus, hastened into France. In his own name, and in the names of the clergy, senate, nobility and people of Rome, he proclaimed Pepin and his sons, Carloman and Charles, patricians of Rome,—that is, exarchs, chosen by the Romans, with another name, and supposed to be subordinate to the emperor. In return, Pepin granted to the pope the city of Ravenna, the Exarchate and the Pentapolis. - - - - - A. C. 753

Though Pepin had been crowned before by St. Boniface, he prevailed on the pope to crown him and his wife and his two sons Carloman and Charles, and to give them the royal unction, in the abbey of St. Denys. In granting his blessing to the people, the pope absolved them from their allegiance to the Merovingian family, and

conjured them by St. Peter, with whose authority God had invested him, to maintain the crown in Pepin's family, whom God had specially chosen for the defence of the church and the holy apostolic see.

Then, at the head of his army, Pepin crossed the Alps; but, on Astolphus's promise to restore his conquests, he returned with his army into France. Far from keeping his word, Astolphus ravaged the Roman territory, and laid siege to the city. The pope applied again to Pepin, by a letter addressed to him, in St. Peter's name. Pepin flew to his relief, and concluded a peace with Astolphus, and forced him to deliver up to the pope the Exarchate, the Pentapolis, and all the cities, castles and territories, which he had seized in the dukedom of

A.C.

Rome. - - - - - 754

Pepin was no sooner returned to France, than Astolphus renewed the war, and laid siege to Rome. But Pepin

again crossed the Alps; forced the Lombard prince to execute the treaty, and made a formal grant of the Exarchate and the Pentapolis to the Roman pontiff and his successors in the apostolic see of A. C. St. Peter. - - - - - 755

From these gifts of Pepin, the temporal sovereignty of the popes in Italy, should be dated. But the pope was subordinate to Pepin, as patrician: and Pepin, as patrician, was nominally subordinate to the emperor of Constantinople; so that the supreme sovereignty of the emperor, was acknowledged by both.

3. Pepin was succeeded by Charle- A. C. magne, his son. - - - - - 768

Desiderius, the immediate successor of Astolphus, dispossessed pope Adrian, the immediate successor of pope Stephen the second, of part of the papal possessions: but Charlemagne took Desiderius prisoner, and put an end to the kingdom of the

Lombards in Italy, or rather annexed A. C.  
 it to his own person. Charlemagne 774  
 confirmed to the pope and his suc-  
 cessors, the donation made to him, by  
 Pepin, of the lands of the Exarchate and  
 the Pentapolis, with the city of Rome, and  
 the adjacent territory, and several other  
 cities and provinces not contained in Pepin's  
 grant: the pope confirmed to Charlemagne  
 and his successors, the patriciat, with the  
 right of nominating the pope. The Romans,  
 and the people of all the other territories,  
 included in the grants of Pepin and Charle-  
 magne, acknowledged the supreme jurisdic-  
 tion of Charlemagne in all civil and military  
 concerns, within the city of Rome, and the  
 Roman territories. Still, however, Charle-  
 magne recognized the emperor of Constanti-  
 nople, as his sovereign, for all his Italian  
 possessions out of Lombardy.

But, in this ambiguous and uncertain  
 state, it was impossible that things should



long continue. It was obvious, that, however the recourse of the pope and the Romans to Pepin and Charlemagne might be excused or even justified, as a measure of absolute necessity, it would be considered by the Greek emperor, as an act of rebellion. This made it necessary for the pope and the Romans to place themselves beyond the reach of his resentment. A temporary defence of this kind they had in Pepin, while he lived; and it was continued to them by Charlemagne; but it behoved them to make it permanent; and this could only be done by electing a sovereign, and rendering the throne hereditary in his family. This being once resolved on, every circumstance pointed out Charlemagne, as the only person, from whom and whose successors, they could rely for the permanent protection which their situation required.

Long was the negociation, for this purpose, between the popes Adrian and Leo

the third, and Charlemagne. Finally, towards the end of the year 800, Charlemagne, at the pope's request, advanced to Rome at the head of his army. On Christmas day, while he was praying on the tomb of St. Peter, the pope, accompanied by the bishops, the clergy, the nobility and a numerous body of the people of Rome, placed on his head a crown of gold, and the people shouted, "Long live Charles! the most pious, august, great and pacific Emperor! crowned of God! Life and Conquest to him." The pope anointed him Emperor, and did him homage. The Emperor then took the following oath: "I Charles, Emperor, promise, in the name of Jesus Christ, before God and the Apostle St. Peter, that I will always defend the Roman Church, against all, as far as God gives me strength and favour." Immediately, in imitation of the Greek emperor, he took the name of

consul, and dated his acts from his own indiction. After a short time the Byzantine court acquiesced in his usurpation, and the limits of the empires were amicably settled.

Thus, after an extinction of more than three centuries, the Roman empire in the West, was restored in the person of Charlemagne. A. C. - - - 800

• See NOTE I.

## PART II.

Comprising the History of the Roman Empire of the WEST, during the time it was governed by the Descendants of CHARLEMAGNE.

814—911.

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## I.

THE empire of Charlemagne comprised the part of Spain, which lies between the Ebro and Pyrénées; the three Gauls, or the countries between the Ocean, the Pyrénées, the Rhine, and the Rhône; the part of Germany between the Rhine and the Oder; the greatest part of the Austrian possessions on the southern side of the Danube, and the whole of Italy, from the Alps to Beneventum.

On the death of Charlemagne, the empire descended to his son, Lewis the Debonnaire.

He, in his lifetime, divided it among his three sons; they quarrelled immediately

after his decease. At the battle of Fontenai, in which almost the whole of the antient nobility of the Franks perished, Lewis the German and Charles the Bald, obtained a victory over Lothaire, their eldest brother: but, through the intervention of the few surviving nobles, the three princes, by the treaty of Verdun, agreed to a DIVISION AMONG THEM OF THE A.C. WHOLE FRANCIC EMPIRE. - - - 842

1. Lothaire preserved the title of Emperor, and the Kingdom of Italy, with all the countries between the Rhône and the Saone, the Meuse, the Scheld, the Rhine, and the Alps.

2. Lewis the German, took all Germany from the Rhine to the Oder, and the three cantons of Mentz, Spire, and Worms.

3. There remained of the empire of Charlemagne, the part of France between the Scheld, the Meuse, the Saone, the Rhône, and the Pyrénées, and the Marca Hispanica,

or the part of Spain between the Pyrénées and the Ebro : these were assigned to Charles the Bald.

Here, properly speaking, the Francic empire terminates. The territories allotted to Lothaire, received the appellation of the *Kingdom of Italy* ; those allotted to Lewis the German, were called *Francia Orientalis* ; those allotted to Charles the Bald, were called *Francia Occidentalis* ; in time, the *Francia Orientalis* was called the *Kingdom of Germany* ; the *Francia Occidentalis* was called the *Kingdom of France*. Till Charles the Bald, the Teutonic or German was the language of the court ; in his time, the Romancic, afterwards called the French language, came into use.

The three kingdoms were reunited in Charles the Fat, who was deposed by his subjects ; and the kingdoms of Italy, France, and Germany, were again separated, the two last, never to be reunited.—From the

skirts of the kingdoms of France and Germany, two new kingdoms arose,—the *Kingdom of Lorraine*, which comprised the country between the Rhine, the Meuse and the Scheld, or the modern Lorraine, the province of Alsace, the Palatinate, Treves, Cologne, Juliers, Liege, and the Netherlands:—and the *Kingdom of Burgundy* divided into the Cisjuranean, or the part of it to the west, and the Transjuranean, or the part of it on the east, of Mount Jura. The former comprised Provence, Dauphiné, the Lyonesse, Franche-comté, Bresse, Bugey, and a part of Savoy; the latter contained the country between Mount Jura and the Pennine Alps, or the part of Switzerland within the Reuss, the Valais, and the rest of Savoy.

## II.

SOON after the division of the empire of Charlemagne, the FEUDAL POLITY as-

sumed a consistency ; and, by degrees overpowered, in every part of his territories, the power and dignity of his descendants. Availing themselves of the weakness of the Carlovingian Princes, the Dukes and Counts converted their Governments into Hereditary Possessions, which they parcelled out among their Barons, and those, among their Tenants, the superior still retaining the faith, homage, and military service of his vassal. The principal of these usurpers were,—in France, the Dukes of France, Burgundy, Normandy, Brittany, Gascony, Gothia, or Septimania, and Aquitaine, the Counts of Flandres, Champagne and Toulouse,—in Germany, the Dukes of Franconia, Saxony, Bavaria, Suabia and Lorraine.—All of them professed to hold their possessions of the crown ; but, as they exercised every royal prerogative within them,



their dependance on the crown was very slight.'

' This is the general opinion; but the celebrated Leibniz has attempted, with much learning and ingenuity, to shew, that, in the very earliest period of German History, the Dukes and Counts were independent princes in their territories; and that they preserved their independence, notwithstanding Charlemagne's German conquest. See his treatise, under the assumed name of *Cæsarinus Furstenerius, de Jure Suprematûs ac Legationum Principum Germaniæ*, in the 4th Tome of Mr. Dutens's edition of his works, six volumes 4to. Geneva, 1768. He seems, however, to concede, that they acknowledged a general superiority, of a feudal nature, in Charlemagne.

### III.

UNDER these circumstances, the HOUSE OF CHARLEMAGNE DECLINED RAPIDLY.

*In Italy*, immediately upon the abdication of Charles the Fat, the kingdom was seized by Guy, the duke of Spolletto, and Berenger duke of Friuli, who both, by females, descended from Charlemagne. This is called by the Italians, the Translation of the

empire of the West to Italy. *In Germany*, upon the abdication of Charles the Fat, the people, from respect to the memory of Charlemagne, deferred the crown, first to Arnold, a natural son of Carloman, king of Bavaria, and, after Arnold's decease, to Lewis his son. On the decease of Lewis, they elected a Duke of Franconia for their king, and then a Saxon line of princes. *In France*, the same respect for the memory of Charlemagne, preserved his descendants longer on the throne :—finally, on the death of Lewis the Fifth, without issue male, Hugh Capet, duke of France, and count of Paris and Orleans, wrested the French sceptre from them.\*

\* SEE NOTE II.

#### IV.

THE first of the two following *Genealogical Tables* shews the Descent of the Emperors of Germany ; the second shews the Descent of the Kings of France, of the House of Charlemagne.

## PART III.

Comprising the Period of the German Empire,  
during the SAXON, FRANCONIAN, and SUABIAN  
Dynasties.

911—1024.

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IN the period of the German history, during which, the throne was filled by the SAXON EMPERORS, the reader's attention is generally directed to four circumstances : 1. the principal states of which Germany was then composed ; 2. the origin of the house of Saxony ; 3. the early cities ; 4. and early monasteries in Germany.

1. The general limits of the German empire have been mentioned : in respect to its *Principal States*, a considerable portion of the part of its territory, which lies on each side of the Mayne, was known by the various appellations of Nova Erancia,

**Francia Orientalis, Francia Teutonica, Ostrofrancia, Austrasia and Franconia.** The space between that part of Germany and the upper Elbe, Saxonia and Alemannia, was filled by the Thuringians. The Saxonia of Ptolemy lay between the Oder and the Elbe ; but, at the period, now under consideration, the Saxons had deserted the Oder, and were spread from the Elbe over the Ems, and reached Francia and Thuringia on the South. The northern country, between the Weser and the Meuse, was called Frisia ; the country between the Rhine and the Meuse was called Austrasia ; the country between the Rhine, the Neker and the Lech, was divided between the Suevi and the Alemanni ; the country between the Lech, the Alpa, and the Anisa, was called Boioaria, since softened into Bavaria. On the east of it, was Austria ; Moravia was called Austria Maharensis ; modern Bohemia was called Beheim ; Croatia ;

Sclavonia, Servia, and Dalmatia, have continued, under the same appellations, to represent the same territories.

2. The Saxon Emperors are generally supposed to derive their origin from Har-derich, the first of the Saxon Kings whose names are known to us. He reigned ninety years before Christ; to him, Hengist, who with his brother Horsa, invaded England in 434, was fourteenth in succession; and Witekind the Great was tenth in succession to Hengist. After a war of thirty years, he was conquered by Charlemagne; the whole nation became subject to the conqueror; and he granted to Witekind the Duchies of Engern and Westphalia; from that time, Witekind took the appellation of Duke of Saxony. In a further part of these sheets, some mention will be made of the Houses which descended from him. Henry, the first emperor of the house of

Saxony, was fifth in descent from him, by males claiming through males.

3. The aversion of the antient Germans from living in *Citics* or even in villages, is mentioned more than once by Tacitus: it decreased, as they spread themselves over the countries lying on the west of the Rhine; so that, at an early period after the Triboci, Nemetes, and Vangiones settled in the country between the Rhine and the Vosges, we find the cities of Strasburgh, Spires, Mayence and Worms. Under the Francic Sovereigns, cities were multiplied; but they were particularly encouraged by Henry the Fowler. From the troops quartered in Germany, he chose every ninth soldier; the remaining eight were to sow and till the land, and to convey its produce to the ninth; he was to raise buildings for its preservation, and habitations for himself and his companions. Insensibly these

soldiers were joined by the general body of the people, particularly of the lower order. The emperor ordered the courts of justice, fairs, tournaments and other public meetings, to be held in the cities, and sent his own officers to preside over them. His example was followed in every part of Germany, so that it scarcely contained a territory which had not its city.

In each of them, there generally was a college of decurions for its internal government, and for transacting its concerns with strangers, and to each of them the emperors generally granted some exclusive privileges. To the more favoured of them, they granted the *Jus Stapulæ*, or the right of having all commodities, which were brought into them, exposed to public sale for the benefit of the inhabitants ; and the *Jus Geranii*, or the right of having all goods imported into them, or exported from them, weighed or measured by the public weights and measures

of the city, for which the city was entitled to a duty. The establishment of a city was at first an imperial prerogative ; insensibly it was usurped, with other prerogatives of royalty, by the nobles. By degrees the cities increased in consequence, and their forms of government became more regular. At first, their chief magistrates were of noble extraction ; but by degrees, the chief offices were opened to the general body of the people : the city of Neuremberg alone invariably continued to be governed by patrician magistrates ; on which account, the German writers generally give her the honourable appellation of the *Inchyta NoreMBERGA*. Thus, soon after the time of which we are speaking, there were in almost every town in Germany three different ranks of inhabitants ; the nobles, the citizens and the slaves ; but, about the beginning of the twelfth century, Henry the fifth enfranchised all slaves in cities who



were artisans, and raised them to the rank of citizens.\*

\* SEE *Heinec. Elem. Jur. Germ. Lib. I. Tit. V. de jure Municipum*, and Dr. Robertson's *View of the State of Society in Europe*, Note xvi. xvii.

4. To this period, we may also assign the great increase of the early monasteries of Germany. On the general utility of those foundations at this æra, a celebrated protestant historian, Mr. Mallet, in his *Histoire des Suisses ou Helvetiens*, 1 Tom. p. 105, thus expresses himself: “ The christian clergy, “ like the Druids of Gaul, were the only “ depositaries of knowledge ; the only law- “ yers, physicians, astronomers, historians, “ notaries ; the only persons acquainted “ with the Belles Letters ; the only persons “ who could instruct youth ; except among “ them, profound ignorance reigned every “ where. The Monks softened, by their “ instructions, the ferocious manners of the “ people ; and opposed their credit to the

“ despotism of the nobility, who knew no  
 “ other occupation than war, and grievously  
 “ oppressed their subjects and inferiors. On  
 “ this account, the government of the monks  
 “ was preferred to theirs. The people sought  
 “ them for judges ; it was an usual saying,  
 “ that it was better to be governed by a  
 “ bishop’s crosier, than a monarch’s sceptre.  
 “ The monks were engaged in useful em-  
 “ ployments ; they cleared and cultivated  
 “ desert and savage lands. We find that  
 “ in many places, where those missionaries  
 “ established themselves, agriculture, next  
 “ to preaching, was their principal occu-  
 “ pation. Where St. Gal built his church,  
 “ he planted a garden, and reared a flock  
 “ of sheep : he recommended to his dis-  
 “ ciples to support themselves by the labour  
 “ of their hands. Was it possible that such  
 “ men should not be venerated, both during  
 “ their lives and after their deaths? Can  
 “ history then reckon up such a super-

“ abundance of men, who have devoted  
“ themselves to the welfare of their neigh-  
“ bours? At a later period, the monks were  
“ corrupted by riches and power: this is the  
“ common fate of man; but, at the time of  
“ which we are now speaking, they had  
“ never been other than respectable. The  
“ monastery of St. Gal had also a school,  
“ which by degrees became famous; both  
“ laymen and persons who devoted them-  
“ selves to the Church, flocked to it in  
“ crowds. There, books were preserved;  
“ there, they were copied; there, several  
“ precious works of antient writers were  
“ discovered, which must have perished in  
“ the general confusion of the barbarous  
“ ages, without these Asylums, where Reli-  
“ gion still threw out some light. When  
“ we consider the profound ignorance of  
“ the nations who invaded the Roman  
“ empire, and established themselves on its  
“ ruins, their exclusive passion for war, their

“ contempt of the sciences, the arts, and  
 “ even of writing, one perceives that every  
 “ thing then concurred to produce in Eu-  
 “ rope, the barbarism which had reigned so  
 “ long among the Celtes, the Scandinavians  
 “ and Sarmatians. What was it, which, in  
 “ this æra of the ruin of the Roman empire,  
 “ preserved the human mind from being  
 “ plunged into the darkness of the greatest  
 “ barbarism, and from losing the last re-  
 “ mains of Greek and Roman lore?—For  
 “ this blessing, mankind is indebted to the  
 “ Christian Religion. Nothing less than  
 “ the power of religion could subdue those  
 “ barbarous prejudices, which carried the  
 “ contempt of the sciences, even to writing.  
 “ It was necessary that there should be a  
 “ sacred book, which made some knowledge  
 “ of writing indispensable ;—a particular  
 “ class, an order of informed men, bound to  
 “ study and teach its contents.”

1. UNDER Henry the III, *the Empire of Germany had its greatest extent*: it comprised Germany, Italy, Burgundy and Lorraine: Poland, and other parts of the Slavonian territories, were its tributaries; Denmark and Hungary acknowledged themselves its vassals.

a. *The Emperors affected to consider all Christendom as forming a royal republic, of which the emperor was chief.* At the council of Tours, in 1055, the emperor Henry III avowed all these pretensions, against Ferdinand the king of Castille, who had assumed the title of emperor; and, on the suggestion of Henry, the pope and the fathers of the council sent deputies to Ferdinand, forbidding him, under pain of excommunication, to take the title of emperor. In consequence of this assumed supremacy, the emperors claimed the exclusive right of creating kings. Boleslaus, the duke of Poland, having taken on himself the title

the nation, to the royal lineage. But by each, the strict line of hereditary descent was occasionally interrupted, by calling to the throne a remote relation, to the prejudice of the actual heir. The government was monarchical; but strongly controlled by the people. Twice a year, the people, or as they were afterwards called, the states, assembled. The first of these general assemblies was held, originally in the month of March, afterwards in the month of May, and always in open air. Hence, from the time of meeting, the expression *le champ de Mars*, afterwards *le champ de Mai*. The second assembly was held in the autumn. It was divided into two classes. The first comprised the bishops, the abbots, the dukes, the counts, and the elders of the nation; and all of them had deliberative voices in the assembly. The second contained the magistrates, and the inferior officers; but these attended only to receive the orders

orders of the assembly. The king proposed the subjects of debate, by his referendary ; the members of the first class deliberated upon them ; the king pronounced the decision. The acts were reduced to writing, under the name of capitularies, and the execution of them was entrusted to the members of the second class. The governors of provinces were called dukes ; the counts were subordinate to them, and administered justice, in the districts committed to their care. The missi regii, were commissaries appointed by the king, to attend to the general administration of justice, throughout the nation. Next to the counts were the barons, or the chief land owners : then followed the general body of freemen ; after these, came the artisans, the labourers, and the villeins. The general administration of affairs, was entrusted to the abbot, who was at the head of the clergy. The referendary and chancellor were the

chief counsellors of state: then followed the chamberlain, the count of the palace, the high steward, the butler, the constable, the marshal, the four huntsmen, and the grand falconer. Such appears to be the general outline of the feudal government, during the Carlovingian line. That line was extinguished, in France, by the accession of the Capetian line ; in Germany, by the accession of the House of Saxony ; and in Italy, by the usurpation of the dukes. Soon after, or perhaps some time before this event, fiefs became hereditary. Even the offices of duke, count and margrave, and the other high offices of the crown, were transmitted in the course of hereditary descent ; and not long after, the right of primogeniture was universally established. It first took place, in the descent of the crown, but was soon admitted by every branch of the feud. This stability of possession was an immense addition to the power of the crown vassals.



enabled them to establish an independency of the crown. They usurped the sovereign property of the land, with civil and military authority over the inhabitants. The possessions, thus usurped, they granted to their immediate tenants, and these granted them over to others, in like manner. By this means, though they always professed to hold their fiefs from the crown, they were in fact absolutely independent of it. They assumed in their territories, every royal prerogative : they promulgated laws ; they exercised the power of life and death ; they coined money ; fixed the standard of weights and measures ; granted safeguards ; entertained a military force ; and imposed taxes, with every other right supposed to be annexed to royalty. In their titles, they styled themselves, Dukes, &c. " by the grace of God," a prerogative peculiarly confined to sovereign power. It is even admitted, that, if the king refused

to do the lord justice, the lord might make  
war against him. In the ordonnances  
St. Lewis, ch. 50, is this remarkable passage  
“ If the lord says to his liege tenant, Come  
“ with me, I am going to make war against  
“ my sovereign, who has refused me  
“ justice of his court : upon this, the liege  
“ man should answer in this manner to  
“ lord : I would willingly go to the king  
“ know the truth of what you say, that  
“ has denied you his court. And then  
“ shall go to the king, saying to him in  
“ manner : ‘ Sir, the lord in whose ligeance  
“ and fealty I am, has told me you have  
“ refused the justice of your court ;  
“ upon this I am come expressly to your  
“ majesty, to know if it is so ; for my lord  
“ has summoned me to go to war with you.  
“ And thereupon, if the king answers, that  
“ he will do no judgment in his court,  
“ man shall return immediately to his lord  
“ and his lord shall equip him, and fit him

“ out at his own expence ; and if he will  
 “ not go with him, he shall lose his fief by  
 “ right. But if the king answers, that he  
 “ will hear him, and do justice to the lord,  
 “ the man shall return to him, and shall  
 “ say : ‘ Sir, the king has said to me, that he  
 “ will willingly do you justice in his court.’  
 “ Upon which, if the lord says, ‘ I never will  
 “ enter into the king’s court, come there-  
 “ fore with me, according to the summons  
 “ I have sent you ;’ then the man shall say,  
 “ I will not go with you ; and he shall not  
 “ lose his fief for his not going.” This  
 shews how powerful and absolute the great  
 vassals were. The same motive which in-  
 duced the vassals of the crown to attempt to  
 make themselves independent of the crown,  
 induced their tenants to make themselves  
 independent of them. This introduced an  
 ulterior state of vassalage. The king was  
 called the *Sovereign lord* ; his immediate  
 vassal was called the *Suzereign* ; and the

tenants holding of him were called the *arrière* vassals. Between these and the sovereign, the connexion was very small. In those reigns even, when the power of the monarch was greatest, his authority over the *arrière* vassals was faint and indirect. Of this the history of Joinville presents a striking instance : Previously to the departure of St. Lewis on the crusade, he summoned an assembly of his barons to attend him, and required them to swear, that, on the event of his decease during the expedition, they would be loyal and true to his son. Joinville his historian, a feudatary of the count of Champagne, though he possessed an enthusiastic veneration for the king, and the warmest attachment to his person, refused, on account of his vassalage to the count, to take the oath : his words are, “ *Il le me demanda, mais je ne var faire point de serement, car je n'estoie pas son home.* ” The consequence was, that, in every king-

dom there were as many sovereigns, with the power and ensigns of royalty, as powerful vassals. With respect to *France*, Hugh Capet acquired the crown of that kingdom, by availing himself of the extreme weakness, to which it was reduced by the system of subinfeudation. After he acquired the throne he used his utmost efforts to restore it to its antient splendour and strength. His successors pursued his views with undeviating attention and policy ; and with so much success, that previously to the accession of Lewis the thirteenth, the seventy-two great fiefs of France were united to the crown, and all their feudal lords attended, at the states general in 1614, the last that were held, till the late memorable assembly of them in 1789. This system of re-union was compleated by the accession of the provinces of Lorraine and Bar to the crown of France, in 1735. (See

*Abrégé Chronologique des grands Fiefs de la Couronne de France, Paris 1729.)—*

Like France, *Spain* was broken into as many principalities as it contained barons. In the course of time, they were all absorbed in the more powerful kingdoms of Arragon and Castile ; and, by the marriage of Ferdinand, the sovereign of Arragon, with Isabella the sovereign of Castile, they were all united to descend in the same line.—No such re-union took place in *The Empire*. Under the immediate successors of Charlemagne, it was broken into innumerable principalities, never to be re-united. If we allow for the difference of public and private manners, it presents the same spectacle at this day, as the other states of Europe presented formerly, but which is now peculiar to itself—a complex association of principalities more or less powerful, and more or less connected, with a nominal souve-

reignty in the emperor, as its supreme feudal chief.

In *England* no such dismemberment, as that we have been speaking of, took place; nor did the nobles ever acquire, in *England*, that sovereign or even independent power, which they acquired in *Spain*, *Germany* or *France*. The power and influence of some of the *English* nobles were certainly great, and sometimes overshadowed royalty itself. But it is evident that *Nevil* the great earl of *Warwick*, and the nobles of the house of *Percy*, the greatest subjects ever known in the country, were, in strength, dignity, power, influence, and every other point of view, greatly inferior to the dukes of *Brittany* or *Burgundy*, or the counts of *Flanders*. The nature of this note neither requires, nor allows, a further deduction of the public history of the feuds of *Europe*: the four circum-

stances we have mentioned—the heirship of fiefs, the right of primogeniture, the intermediate sovereignty of the crown vassals, and the introduction of subinfeudation, completed the triumph of the feud over monarchy.—Here the historical deduction naturally closes. The Carlovingian family is the important link, which connects ancient with modern history, Roman jurisprudence with the codes of the German tribes, and the law of civil obligation, with the law of tenure.”



THE principal events in the history of the latter princes of the *Franconian* line, and of all the princes of the *Suabian* line, were produced or influenced by THE CONTESTS BETWEEN THE POPES AND THE EMPERORS. The grounds of these contests were I. The Right claimed by the emperors of nominating to vacant bishopricks, and the form, by which they contended that bishops elect, should be invested with the temporal possessions of their sees : II. The claims of the popes to hold their antient Italian territories, independent of the emperors, and the disputes between the popes and the emperors, respecting the new acquisitions of the popes in Italy : and III. The claim of the popes to the supreme dominion of every part of the christian world, both in temporal and spiritual concerns.

I. 1. As

## I.

**I. 1. As to THE RIGHT OF NOMINATING TO VACANT BISHOPRICKS :—**in the early ages of the church, bishops were elected at a congregation of the clergy and laity of the diocese. One or more of the neighbouring bishops presided at the elections: the whole congregation elected, the bishops consecrated. If, on some occasions, the bishops did not acquiesce in the choice of the congregation, these were considered as extraordinary cases, in which the general rule was infringed.

In the reign of Constantine the Great, rank and wealth began to preponderate; the negative power of the bishops, from their exclusive right of consecration, and the general influence of the clergy, from the superior sanctity of their character, were more sensibly felt. In process of time,

the emperor became lord of the ascendant ; and, by degrees, little attention was paid in the choice of bishops, either to the wishes of the clergy, or the wishes of the laity.

The election of the bishop of Rome was conducted in the same manner, but, on account of the superior importance of the see, attracted more of the attention of the emperors, than the election of any other bishop.

On the division of the Empire between the sons of Theodosius the first, all that concerned the bishop of Rome, devolved to the emperor of the west. After Justinian recovered Rome from the Vandals, it fell to the Greek emperor ; and, on account of his distance from Rome, his rights on these occasions were exercised in his name, first, by the Proconsul of Italy, and afterwards by the Exarch of Ravenna. On the restoration of the Roman empire of the west, in the person of Charlemagne, they devolved

poral possessions of the see: the bishop delivered them over into the hands of the metropolitan, and received them back from him, as a symbol of the spiritual right conferred on him by his consecration.

It is evident, that the delivery of the ring and crosier, by the emperor to the bishop elect, though it was principally intended as a symbolic delivery of the tenements or temporal possessions of the see, operated, indirectly, as an appointment to the see, or at least as a Veto on any other appointment. Besides,—it too often happened, that the princes sold, or otherwise corruptly disposed of the vacant bishopricks; and, in this, they were assisted by the right claimed by them, of withholding the ring and crosier.

In this ceremonial, three things gave particular offence to the Roman pontiffs, 1st, they considered it a spiritual ceremony, which it was, therefore, a sacrilege in a

layman to perform ;—but the spirituality of the ceremony it was difficult to prove :—2dly, they said it virtually deprived the clergy of their right of election ; in answer to this, the prince alledged that he represented the whole body of the people, to whom the right of election primitively belonged :—and 3dly, it was said to facilitate the simoniacal traffic of benefices ;—this was certainly the case, but it was rather an abuse of the ceremony, than an objection to the ceremony itself.

It is probable, that, if some person of weight had brought the popes and princes to a clear understanding of the rights claimed by them, their disputes might have been accommodated to their mutual satisfaction, either by substituting some ceremonial agreeable to both parties, or by making each party declare what he understood the ceremonial in use to import, and disclaim the opposite construction. Instead of this, the

dispute involved the state and church, for more than a century, in the deepest calamities, and the most complicated scenes of confusion and distress.

I. 3. At length the matters in dispute were amicably arranged.

In respect to the right of nominating to Bishopricks,—it was finally settled,—in Germany, by the Concordate of 1447, which confirmed the election of bishops to the chapters exercising that right:—in France, by the Concordate of 1516, which vested the nomination to bishopricks, and the collation of certain benefices of the higher class in the kings of France,—in Spain, by prescription, repeatedly allowed by the popes, under which the kings have uninterruptedly exercised the right of nominating bishops,—and in England, by the charter of king John, recognized and confirmed by his Great Charter, and by the 25th of Edward the Third, Stat. 6. § 3, which

gave up to the chapters the free right of electing their prelates ; but that statute is virtually repealed by the 25th Henry the Eighth, c. 7, by which, the chapters, if they do not elect the persons recommended by the king's letters missive are subjected to the penalties of Premunire.

I. 4. *As to the mode of investing Bishops elect with their temporalities :—*At a General Diet, held at Worms in 1122, it was settled that bishops should be chosen by those whom the right of election belonged, the presence of the emperor or his ambassador ; that, in the case of a dispute among the electors, the emperor should decide and that the bishop should take an oath of allegiance to the emperor, and receive his temporalities from him by the delivery of the sceptre, and do the emperor homage for them. This convention was solemnly confirmed in the following year, at the council

of Lateran. Speaking generally, this form of investiture has been adopted in every part of Christendom.

## II.

In respect to THE CLAIMS OF THE POPES TO HOLD THEIR ANTIENT ITALIAN TERRITORIES INDEPENDENT OF THE EMPERORS, AND THE DISPUTES OF THE POPES WITH THE EMPERORS RESPECTING THE NEW PAPAL ACQUISITIONS IN ITALY,—in some former of these sheets, the gradual rise of the bishop of Rome, in his successive character of an unpropertied ecclesiastic,—of a trustee of some moveables and immoveables for the service of the church and purposes of charity,—of an owner of houses and farms,—of a magistrate,—and of a subordinate prince with a considerable degree of temporal and territorial power and political influence, has been noticed. With *his* growth and *his* strength



the general body of the clergy grew and strengthened. They first acquired for themselves and their successors, those private possessions which every citizen may enjoy ; they were afterwards endowed with castles, fortresses, cities, provinces and other public grants, which are peculiar to sovereigns, to princes, and to the highest nobility. These, the Carlovingian monarchs bestowed on the clergy with a liberal hand. Their aim was, through the medium of these grants, to civilize the barbarous countries over which they reigned ; and to secure a numerous and respectable body of men, on whose loyalty and fidelity they could depend, in any contest with their overgrown vassals or turbulent subjects.

In the first of these objects, they partially succeeded ; in the second, they wholly failed, as the clergy soon enlisted under the banners of the pope, in his quarrels with the emperor, and made it a common

cause with him, to render themselves independent of the secular power.

Their next attempt was of a bolder kind. They asserted a right, both of spiritual and temporal power, over the emperor; and pretended that he held the empire as a fief or benefice from them. Their success in these attempts in a great measure answered their wishes. On the one hand, it became a fundamental maxim of jurisprudence, that the emperor acquired in the instant of his election at the German diet, the kingdoms of Italy and Rome; on the other, this kingdom was merely nominal; and it became another maxim of jurisprudence, that the emperor could not legally assume the titles of Emperor or Augustus, till he had received the crown from the hands of the pope; and he was often obliged to purchase it by great sacrifices.

In the mean time, the pious munificence of the celebrated Mechtildis, countess of

Tuscany, had enriched the holy see with considerable possessions. By two deeds of gift, she gave all the estates she was then possessed of, or might afterwards acquire, to the holy see. The principal of them were Tuscany, Spoleto, Parma, Placentia and a considerable territory in Lombardy. She died without lineal heirs, and the emperor claimed them as an escheat: this was a fresh subject of contest between the popes and the emperors.

### III.

THE Popes soon advanced a still higher claim : *In virtue of an authority, which they pretended to derive from heaven, some of them asserted, that the Pope was the supreme Temporal Lord of the universe, and that all princes, and civil governors, were, even in temporal concerns, subject to them.* In conformity to this doctrine, the popes took upon them to try, condemn, and depose sovereign princes;

to absolve their subjects from allegiance to them, and to grant their kingdoms to others.

That a claim so unfounded and impious, so detrimental to religion, so hostile to the peace of the world, and apparently so extravagant and visionary, should have been made, is strange :—stranger still is the success it met with. There scarcely is a kingdom in christian Europe, the sovereign of which did not, on some occasion or other, acquiesce in it, so far, at least, as to invoke it against his own antagonist ; and, having once urged it against an antagonist, it was not always easy for him to deny the justice of it, when it was urged against himself. The contests respecting it were chiefly carried on with the German emperors. All Italy and Germany were divided between the adherents of the popes and the adherents of the emperors.

At the time, when these contests first

commenced, the Guelphs of Altorf in Saxony, were among the most illustrious families in Germany. In several battles, in which a prince of that house commanded the Saxon and Bavarian troops against the emperor Conrad the third, the son of Frederick duke of Suabia, Guelph was the word of war with the former, and Weiblingen, the place where Frederick was born, was the word of war with the latter. Insensibly these words were used to denominate opposite parties ; and by degrees all persons opposed to the emperor were called Welfts, and all his adherents were called Weiblingenites. These appellations continued to be used in the contests between the popes and the emperors, but the Italians softened them into *Guelphs* and *Ghibellines*.<sup>1</sup>

<sup>1</sup> In this Section the writer has principally consulted the very learned work of Thomassin, "*Traité de la Discipline Ecclesiastique*, 3 vol.

fol. 1725;—*Histoire de Charlemagne*, par M. Gaillard, 4 vol. 8vo. Paris, 1782. Mosheim's *Ecclesiastical History*, translated by Doctor Maclaine, 5 vol. 8vo. London, 1774. What is said in the last of these works on the subject of investitures is particularly interesting;—Giannone's *Historia de Napoli*, 4 vol. 4to. Naples, 1723. On the celebrated Donation of the Countess Mecthildis, the writer particularly consulted the Abbé St. Marc's Dissertations on this subject in his *Abrégé Chronologique de l'histoire d'Italie*, 6 vol. 8vo. A short and clear account of the political views with which the Pragmatic Sanction of France was framed, is given by Mr. Roscoe, in his *Life and Pontificate of Leo the tenth*, vol. iii. p. 62—63.

## PART IV.

Comprising the Period of the German History,  
between the Extinction of the SUABIAN DYNASTY,  
and the Election of the Emperor CHARLES the  
Fifth.

1254——1519.

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1. *The Great Interregnum,*

1254——1272.

THE contests between the Popes and the Princes of the House of Suabia reduced the Empire to a state of anarchy, which produced, what is generally called by the German writers, THE GREAT INTER-REGNUM. During this period six princes claimed to be Emperors of Germany.

1.  
Henry Raspo, Landgrave of Thuringia; elected emperor in 1246, in opposition to Frederick, II, + in 1248.

2.  
William Count of Holland, elected emperor in 1250, by another party; + in 1256.

3. Conrad

3.  
**Conrad IV**, the last of the Suabian princes; he is mentioned in the preceding Table V. (p. 59.)

5.  
**Alphonsus**, son of Ferdinand III, king of Leon and Castile; elected the same year, as Richard; but he never came into Germany, or took the title.

4.  
**Richard**, Duke of Cornwall; elected by some princes in 1257; quitted the empire in 1259.

6.  
**Premislaus III.** King of Bohemia, elected in 1272.

2. *The period between the first and last accession of the House of Hapsburgh to the Empire.*

1272—1438.

THE Interregnum was determined by the election of **RUDOLPH COUNT OF HAPS-BURGH**. From him, till the ultimate accession of the House of Austria, the empire of Germany was held by the following Emperors :

1.		Time of Election.
<b>Rudolph, Count of Hapsburgh</b>	- -	<b>1273</b>



				Time of Election.
2.	Adolph, Count of Nassau	-	-	1298
3.	Albert I. Archduke of Austria	-	-	1298
4.	Henry, Count of Luxemburgh	-	-	1308
5.	Lewis V. Duke of Bavaria	-	-	1314
6.	Charles, King of Bohemia	-	-	1347
7.	Winceslaus, King of Bohemia	-	-	1378
8.	Robert, Elector Palatine	-	-	1400
9.	Sigismond, King of Hungary	-	-	1410
10.	Albert II, Duke of Austria	-	-	1438

During the period between the last accession of the House of Hapsburgh, and the election of Charles V, the empire of

Germany was held by the following Emperors:

1.	Time of Election.
Frederick III. - - - - -	1440
2.	
Maximilian I. - - - - -	1493
3.	
Charles V. - - - - -	1519

The events, which claim particular attention in the history of this period, may be divided into those which relate to the Italian, and those which relate to the German territories of the emperor.

With respect to the first, the chief of them appear to be I. The rise of the Italian Republics, particularly Venice, Genoa, and Florence : the rise of the Princes of Savoy, and Milan, and the revolutions of Naples, and the two Sicilies : II. The commencement of the decline of the Pope's temporal power : and III. The state of the City of Rome.

## I.

ABOUT the middle of the twelfth century, *the towns of Lombardy and Tuscany availed themselves of the weakness of the emperors to form themselves into Republics*, but with an acknowledgment of feudal subjection to the emperor. Milan led the way, and was followed by Parma, Placentia, Pavia, Cremona, Lodi, Como, Padua, Bologna, Pisa and other towns. At first, the emperors connived at these innovations, with a view of weakening the power of their immediate vassals : but Frederick Barbarossa undertook to reduce the towns to their original condition ; and actually destroyed Milan, and dispersed its inhabitants. The other towns did not lose their courage ; in 1168, they entered into a federal union of attack and defence, and the See of Rome always assisted them : (See Mallet du Pan, 2 Vol. 350, 351.) At the battle of Lignano,

Lignano, in 1176, they gave the emperor a check, which wholly disabled him from continuing his hostile measures against them ; and a definitive treaty of peace between them and the emperor was signed at Constance in 1183.—This is the Treaty *de Pace Constantiæ*, generally published after the Novells, in the *Corpus Juris Civilis*.—His son Frederick revived his pretensions ; but the towns renewed their league, and baffled his attempts to subdue them.

Generally speaking, the nobles of Italy became members of the towns adjoining their possessions. Too often, an ambitious individual interrupted the peace of the community, by his attempts to attract to himself, in some form or other, the whole power of the state.

The rise of the republics of Venice,<sup>s</sup> Genoa,<sup>a</sup> and Florence,<sup>1</sup> of the Princes of<sup>k</sup> Savoy

<sup>s</sup> See Note IV.

<sup>a</sup> See Note V.

<sup>1</sup> See Note VI.

<sup>k</sup> See Note VII.

and Milan,<sup>1</sup> and of the kingdom of <sup>=</sup> Naples, is a curious subject of enquiry. It belongs rather to the history of Italy than to the history of Germany: its connexion with the latter is not, however, very remote; and therefore some account of the rise and first increase of some of these republics and principalities, and of the kingdom of Naples, will be found in the notes.

## II.

**BUT the History of the German Empire is immediately connected with THE HISTORY OF THE PAPAL TERRITORIES IN ITALY.**

Something has been said on the rise and progress of the temporal power of the popes. The beginning of the fourteenth century may be assigned for the æra of its highest elevation; as, about that time, their territorial possessions had their largest extent: they had then made their greatest

<sup>1</sup> See Note VIII.

<sup>=</sup> See Note IX.

progress in exempting the clergy from the civil power; and they then experienced least resistance to their general claim of divine right to temporal power. They might, therefore, at this time be thought to have secured the duration of their Temporal Empire:—from this period, however, it began to decline, and the causes of its decline are obvious.

1. On some occasions, *they carried their pretensions to a length, which excited the disgust, and even provoked the resistance of the most timid.* The extravagant conduct and language of Innocent III, Boniface VIII, and Clement VI, in their contests with Philip Augustus, Philip the fair, and Lewis of Bavaria, gave general offence, and led several States of the kingdoms of Europe to make strong declarations of the independence of their sovereigns on the see of Rome in all temporal concerns.

2. They were engaged in some *enterprizes*

evidently *unjust*; and the lives of some of them were confessedly *dissolute*.

3. In the year 1309, the policy of the French king prevailed on the pope to *Translate his see to Avignon*: and, for a period of seventy years, that city continued the metropolis of christendom. This exasperated the Italians to the highest degree: they lost their personal affection for the pope, they called his residence at Avignon the captivity of Babylon, and filled Europe with their invectives against him.

4. An event then took place which was still more detrimental to the popes. Gregory the eleventh quitted Avignon, and established his residence at Rome; he died in 1378. The Italian cardinals chose a pope who took the name of Urban the sixth, and fixed his seat in the city of Rome: the French cardinals chose one, who took the name of Clement the seventh, and fixed his seat at Avignon. All christendom was

divided between the popes; and *The Schism* continued from 1378 to 1417, when it was ended by the elevation of Martin the fifth. During the period of the schism two and sometimes three rival popes were wandering over christendom, dividing it by their quarrels, and scandalizing it by their mutual recriminations.

5. But nothing contributed so much to the decline of the Temporal Power of the Popes, as the *Discussions which took place at the councils of Constance, Basil and Pisa, and the writings of several men of learning, particularly of the Parisian school*, who now began to discuss the papal pretensions to temporal power with temper and erudition.

6. A rougher attack was made on them by the Albigenses, Wicklefites, Waldenses, Lollards and other heretics of the fourteenth and fifteenth centuries. It must be admitted on the one hand, that they maintained several doctrines irreconcilable with those of



the gospel, and subversive of civil society ; so that it is amazing that the reformed churches should be so anxious to prove their descent from them ; and on the other, that they brought charges against some Temporal Usurpations of the popes, and churchmen, to which their advocates could make no reply.

The effect of these circumstances was, that the justice of the pretensions of the see of Rome to temporal power, by divine right, became much suspected ; the antient canons were more attended to, and the limits of spiritual and temporal power were better understood."

" THE general justice of this representation is acknowledged by the warmest and ablest advocates of the church of Rome. While, with every true Roman Catholic, they assert, that nothing can be wrong in the faith or worship of the church ; and that the authority, which the church, her supreme pastor, and her prelates, received from Christ, always has been, and must ever be, unaltered and unalterable : they admit, that, when Luther first made his attack on the

church of Rome, much reformation in the church, both in respect to its Head and its Members, was wanting in discipline and morals.—See the first pages of the celebrated *Variations*; particularly the extract in them, from Cardinal Julian's Letter to Pope Eugenius IV, written nearly a century before the Reformation, in which he clearly predicts it and its consequences.

A well-written *Historia Reformationis ante Reformationem* (an expression familiar to the writers on the Continent), is much wanted. We are informed by the Editors of Beausobre's *Histoire de la Reformation*, (a valuable work), that something of the kind was found among his papers, with the title of *Preliminaires de la Réformation*; if it has been printed, it has not found its way to the London market.—The Abbé Barruel has promised the public an *Histoire du Jacobinisme du Moyen Age*: it is to be hoped he will execute his promise.

### III.

OF the Papal Territories,—(particularly in respect to the Subject of these sheets),—no part is of so much importance as THE CITY OF ROME. It is a remarkable circumstance, that, during the time that the power of the popes was most formidable in every

part of christendom, their authority at home was so inconsiderable, that, on many occasions, the city of Rome was polluted with sedition and murder, and the popes could not preserve themselves from the greatest indignities. The political heresy of Arnold of Brescia, not very unlike the Jacobinical doctrines of our times, shook both the civil and ecclesiastical governments of Rome to their foundations. As soon as it was subdued, some measures were taken to establish good order in the dominions of the pope. For a considerable time, they produced the most salutary effects; but the papal chair was no sooner moved to Avignon, than Rome was plunged into all its former disorders; and Italy, in general, began to entertain republican principles. Nicholas Rienzi, an eloquent and ambitious Roman, availed himself of this disposition of his fellow-citizens to make himself master of the city of Rome, under the popular name of Tribune. He spread terror over all

Italy; and, if he had possessed discretion equal to his popular talents, might have effected a complete revolution in the greatest part of the Italian territories:—for want of discretion, he failed. The popes, however, did not soon regain their ascendancy, either in the city or in the other parts of their territories.

During the schism, the tumults of Rome increased. With the elevation of Martin V, which terminated it, they appeared to subside; but they again broke out under Eugenius his immediate successor. Nicholas the fourth, the successor of Eugenius, a man of talents and a peaceful disposition, restored order to the ecclesiastical territories. During his reign, Frederick III. of Austria was crowned emperor at Rome: and he was the last emperor for whom the ceremony was performed in that city; so that his successors wholly rest their title on the choice of the electors of Germany.

To this period may be assigned the elevation of the Roman Nobles : the principal families of them are, confessedly, the *Colonnas*, *Ursinis*, *Contis* and *Savellis*.

#### IV.

SUCH was the state of Italy during this period :—With respect to *GERMANY*,—its boundaries, the form of its government,—and the rise of its towns, particularly those which composed the *Hanseatic League*, are the chief subjects of consideration.

Its *BOUNDARIES* were the *Eyder* and the sea on the north ; the *Scheld*, the *Meuse*, the *Saone*, and the *Rhone* on the west ; the *Alps* and the *Rhine* on the south ; and the *Leith* and the *Vistula* on the east.

This ample territory consisted of various provinces.

1st. The most important of them was *the Dutchy of Burgundy* :—it contained

Savoy, the lesser Burgundy, Provence, Dauphiné and Switzerland.

2nd. The next in importance, was the *Dutchy of Lorraine* :—besides the territory of Lorraine, properly called, it contained the Lower Lorraine, or the country between the Rhine, the Meuse and the Scheld ;—the country of Holland and Zeeland ;—the Dutchies of Brabant and Limburgh ; the countries of Hanau, Flanders, Gueldres and Luxemburgh. The adjoining province of Friezeland was, in some measure, attached to Lorraine, but was neither subject to a Duke nor a Count.

3d. On the extinction of the Suabian Dynasty, the antient *Alemannia and Frania*, in which their possessions chiefly lay, were divided into various principalities.

4th. It has been observed, that, in the times of Cæsar and Tacitus, the Danube was the southern boundary of Germany. The irruption of the Franks carried it over

**Rhætia, Noricum and Pannonia.** The greatest part of this new territory, since called *Bavaria*, was then called *Boioaria*, from the Boii.

5th. The original limits of *Saxony* have been mentioned: at this period of the German history, Saxony was divided by the course of the *Weser*, into the different denominations of the eastern and western Saxony; or, as the inhabitants of them were then called, in the language of the country, the *Ost-fales Saxons* and the *West-fales Saxons*. The country of the former was sometimes called *Saxony on the Elbe*; the country of the latter was sometimes called *Saxony on the Weser*. Under the general name of *Saxony*, *Misnia*, *Thuringia* and *Hessia*, were usually comprised.

6th. The *Sclavic territory*, or the country between the *Oder* and the *Vistula*, was filled by the *Margraves of Brandenburg* and the *Dukes of Poland and Bohemia*.

To the latter, Moravia, Silesia, and Luzatia were generally vassals, or in a looser state of subjection.

7th. On the east of Saxony, were *Pomerania* and *Prussia*. They, generally, were in a state of warfare with some or other of the adjacent princes.

8th. On the east of Bavaria a considerable territory received the appellation of the *Marchia Orientalis*, or *Oost-rich* : it was afterwards called Austria.

## V.

SUCH were the territories of Germany.— In respect to the sovereigns, by whom it was governed, none but the principal of them are the subject of the present enquiry. It has been observed, that, under the immediate successors of Charlemagne the empire was broken into innumerable principalities, and were never re-united.



As to the FORM OF ITS GOVERNMENT, the empire was always elective; but great alterations took place in the mode of election. At first, the emperor was chosen by the people at large; the right of election was afterwards confined to the nobility and principal officers of the state: insensibly it was engrossed by the five great officers, the Chancellor, the Great-Marshal, the Great-Chamberlain, the Great-Butler and the Great-Master of the Palace. At first, they assumed the right of proposing the candidate to the general body of electors; they afterwards confined the whole right of election to themselves. After much discontent this was settled, first, by the Electoral Union in the year 1337, and finally, in the reign of the emperor Charles the fourth, by the celebrated constitution, called, from the seal of gold affixed to it, the Golden Bull. By that, the right of election was fixed in four spiritual, and three temporal electors; in

the Archbishop of Mentz, as Great-Chancellor of the empire in Germany ; the Archbishop of Cologne, as Great-Chancellor of the empire in Italy ; the Archbishop of Treves, as Great-Chancellor of the empire in the Gauls, and the kingdom of Arles ; the King of Bohemia, as Great-Butler ; the Count Palatine, as Great-Master ; the Duke of Saxony, as Great-Marshal ; and the Margrave of Brandenburg, as Great-Chamberlain of the empire. At subsequent periods, the duke of Bavaria and the duke of Brunswick-Lunenburgh have been advanced to the electoral dignity ; the former is styled the Arch-treasurer, the latter, the Arch-standard-bearer of the empire.

These are the ancient Electoral families of Germany : some account of them will, therefore, be given in a note.\*—The fleeting forms of *the Minor Princes of Germany*

\* SEE NOTE X.

it is foreign to the subject of these sheets to trace ; a general mention of them will be made in a note.\*

## VI.

VI. 1. THE CITIES OF GERMANY deserve particular notice in this period of the German history ;—their rise and progress to the end of the Saxon dynasty have been noticed. In the acquisition of independence they preceded the Italian republics ; insensibly they became divided into the *Free Cities*, or those which held immediately of the emperor, and had seat and voice at the diet :—the *Mixed Cities*, or those which had put themselves under the protection of some prince to whom they paid a quit-rent, but were not subject to his jurisdiction, and had neither seat nor voice at the diet ; —and the *Municipal Cities*, which were entirely subject to the states. All these cities

\* SEE NOTE XII.

were

were encouraged by the emperors; the principal inhabitants among them were incorporated; and the corporations, when the members of them became very numerous, were divided into companies. Insensibly, they were admitted, by their deputies, to a voice in the diet, or national council of the Empire; and the clergy forming the first, and the nobility forming the second state in it, they formed the third estate. England gave the example of this salutary and important innovation; the origin of her house of commons, as a separate body, may be assigned to the middle of the thirteenth century; in France, the commoners were admitted into States General, in 1302; in Germany, in 1309. The *Abolition of Slavery* followed. In 1315, Lewis the tenth published a Royal Ordonance, which declared, that slavery was contrary to the Law of Nature; that his kingdom was called the kingdom of Franks or Freemen, and that

it was fit, that, it should be such in ality." In other kingdoms, the spirit christianity, and the increasing human of the times, gradually abolished slave without any legislative provision. In Germany, the number of slaves rapidly creased after the thirteenth century:—England, villenage was wholly extinguished towards the beginning of the reign of James the first.

VI. 2. *The Hanse-towns* deserve particular mention.—They were originally a confederacy of Towns, which, in the thirteenth century, united in alliance for the mutual support and encouragement of their commerce. The confederacy was first set on foot by the city of Bremen, and several seaport towns in Livonia. The advantages which they derived from the confederacy attracted other trading towns to it. At one time, the confederacy reckoned eighty towns: they were divided into four classes

the Vandalic, over which Lubec presided, comprised the towns on the Baltic between Hamburg and Pomerania:--the Rhenanan, over which Cologne presided, comprised the towns on the Rhine:--the Saxon, over which Brunswick presided, comprised the towns in Saxony and Westphalia:--the Prussian, over which Dantzick presided, contained the towns of Prussia and Livonia.

From the beginning of the fifteenth century, Lubec was considered as the head of the towns: the archives of the confederacy were kept, and its general assemblies were held in that town.

The League possessed factories and warehouses at Bruges, for their trade with Flanders; at London, for their trade with England; at Novogorod, for their trade with Russia; and at Bergen, for their trade with Norway.

Originally, the only objects of the Hanseatic confederacy were to secure their com-

merce against pirates and plunderers, and to extend it by peaceable and friendly communications. They conveyed to the southern parts of Europe, the flax, hemp, timber for shipping, skins, leather, and other commodities of its northern growth; and returned to the north, laden with fruits, wines, drugs, silks, and other commodities of its southern growth. In the course of time, they rose to such a degree of power as to engage in treaties with sovereigns, and even to carry on offensive and defensive wars. This raised general jealousy, and the kings of France, Spain and Denmark, and several states of Italy, forbid their towns to continue members of the confederacy. Upon this, the Teutonic Hanse-towns restricted the confederacy to Germany, and distributed it under four metropolitan towns,—Lubec, Cologne, Brunswick and Dantzick. Brunswick and Cologne afterwards separated from them; several towns followed

their example, so that, about the middle of the seventeenth century, the confederacy was almost wholly confined to the towns of **Hamburgh, Lubec and Bremen**. They retained the appellation of **Hanseatic towns**, and claimed their former privileges. Under the appellation of **Hanse-towns** they were recognised at the peace of **Utrecht** in 1715, and, at the **Definitive Treaty of Indemnity** in 1805 ;—almost the last moment of their political existence.

**VI. 3.** The **Hanse-towns** were robbed of a considerable portion of their trade by *the Netherlands*. For centuries, they enjoyed, almost exclusively, the commerce of cloth, cotton, cameletts and tapestry. In exchange, they received raw wool from **England** ; silk, spices, and the other productions of the **Levant**, from the **Italians**. The wealth and splendour of the commercial towns in that country in the æra of their prosperity, placed the **Dukes of Burgundy**, their sove-



reigns, on a level with the greatest monarch and enabled their principal merchants display such magnificence in their dress, their buildings, and their mode of living, excited the envy of the noblest princes Europe.—Bruges was their capital:—1310, it contained sixty-eight companies of traders and artificers; insurances and letters of change were in common use.

Doctor Robertson (in his *Historical Enquiry*, page 239), mentions, that, in the year 1301, Joanna of Navarre, the wife of Philip the fair, King of France, having been some days in Bruges, was so much struck with its grandeur and wealth, and particularly with the splendid appearance of the citizens wives, that she was moved by female envy to exclaim with indignation, “ I thought that I had been the only queen here, but I find that there are many hundreds more.” Few persons have seen, without surprise, the long and

splendid line of towns between Ostend and Liege. When we consider, that they have survived their commerce for more than two hundred years, we may form some notion of the general populousness and magnificence of the territory and its inhabitants in the day of their prosperity.

In consequence of a dispute with the emperor Maximilian, Bruges was deprived of a considerable part of its trade, and from that time, the city of Antwerp took the lead in commerce ; but taxes and imprudent regulations insensibly undermined the general trade of the Netherlands ; and, while the wise policy of Edward the third attracted almost the whole of its woollen trade to England, the remainder of it was carried to Holland. An important addition to the commerce of the latter, was the discovery made towards the end of the 14th century,

oy William Beukelroon, of the art of pickling herrings.\*

- \* SEE Doctor Robertson's *View of the Progress of Society in Europe*, prefixed by him to his *History of Charles the Fifth*; the *Historical Disquisition concerning the Knowledge which the Antients had of India*, with which he so respectably closed his literary career; Guiccardini's *Description of the Low Countries*; and the elegant opening of Strada's *Historia de Bello Belgico*.—What is said on the Hanse-towns is chiefly taken from Mr. Anderson's *History of Trade and Commerce*; and Mr. Mallet's recent work *De la Ligue Hanseatique*, octavo. Geneve, 1805.

## PART V.

Containing some Account of the Rise and Progress of the HOUSE of HAPSBURGH, till its ultimate Accession to the Empire of Germany.

700—1428.

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## I.

THE ORIGIN OF THE HOUSE OF HAPSBURGH is traced, with a high degree of probability, to Eticho, duke of Suabia and Alsace in the year 700, the patriarch both of the antient and modern House of Austria. Hugh, a descendant from him in the fourth degree, had two sons, Everard, the general parent of the House of Lorraine, and Guntram, the general parent of the House of Hapsburgh, and died about the year 920. It is remarkable, that, by the marriage of Maria-Theresa of Austria, with Francis of Lorraine, in 1736, the families, after a sepa-

ration of eight centuries, were re-united. Guntram had considerable possessions in Alsace, Brisgau and the Argau: his possessions in Alsace and Brisgau he forfeited, in consequence of his rebelling against the emperor Otho the first. Rudolph, the immediate author of the high fortunes of the Hapsburgh family, was about the tenth in descent from Guntram. His ancestors had become Counts of Surgau, Argau, Altemburgh, Kyburgh and Zeirengen, and Landgraves of all Alsace. Their castle of Hapsburgh stood in the bailliwick of Argau, not far from the junction of the Aar and the Reuss. It commanded an extensive view of the eastern extremities of the Pennine Alps: and, from that position, derived its original appellation of Alpesburgh, afterwards contracted to Hapsburgh. About the beginning of the eleventh century, it was rebuilt and considerably enlarged by Radfodus, a descendant from Guntram.

It appears that Rudolph of Hapsburgh had, in his youth, an office in the household of Ottocar, king of Bohemia. At a more advanced age he commanded the military forces of the towns of Zurich and Strasburgh, and acquired the character of an honourable knight and an able general; but neither the extent of his territories, nor his personal consequence, could lead him to expect the high rank, to which he lived to see his house exalted.

His sister Elizabeth married Frederick, of the house of Hohenzollern, the founder of the royal house of Prussia. It certainly was not then foreseen, that the houses of Hapsburgh and Hohenzollern should become the preponderating powers of Germany, and fill it with their civil and religious quarrels.

At this period of its history, the German empire was in its lowest state of anarchy; its princes lived in constant warfare with

one another, and the people had no other means of protecting themselves against general oppression, than forming leagues and associations, or making themselves vassals to some neighbouring prince, who, however he might himself oppress them, would defend them against the oppression of others. This scene of public and private confusion and calamity had continued so long, that every description of men anxiously wished an emperor might be chosen who should restore good order and government. The difficulty was to find a person capable of effecting so desirable an object, without possessing, at the same time, such a degree of power, as would alarm the jealousy of the princes, and make them tremble for the security of their own usurpations. Such a person, the electors thought they had found in Rudolph of Hapsburgh: he was accordingly elected king of the Romans on the 30th of September 1273, and soon

afterwards crowned emperor at Aix-la-Chapelle. Ottocar, his former master, had, during the anarchy of the empire, seized the province of Austria, a fief held of the emperor by the counts of Tyrol: Rudolph summoned him to restore it and do homage for his possessions. Ottocar received the summons with indignation: "What does Rudolph want?" he used to say; "I have paid him his wages." Rudolph marched his army into Austria, vanquished Ottocar, and insisted on his rendering him homage. It was agreed between them, that the ceremony should be performed, under cover, in a tent. It took place in an island on the Danube; and the hostile armies were ranged along the opposite banks of the river. Ottocar, according to the usual form, was placed at the knees of Rudolph, with his hands inclosed in the emperor's;—on a sudden, the tent was drawn up, and exposed the triumph and humiliation of the chiefs



to be the patriarch of the German branch of the house of Austria.

## II.

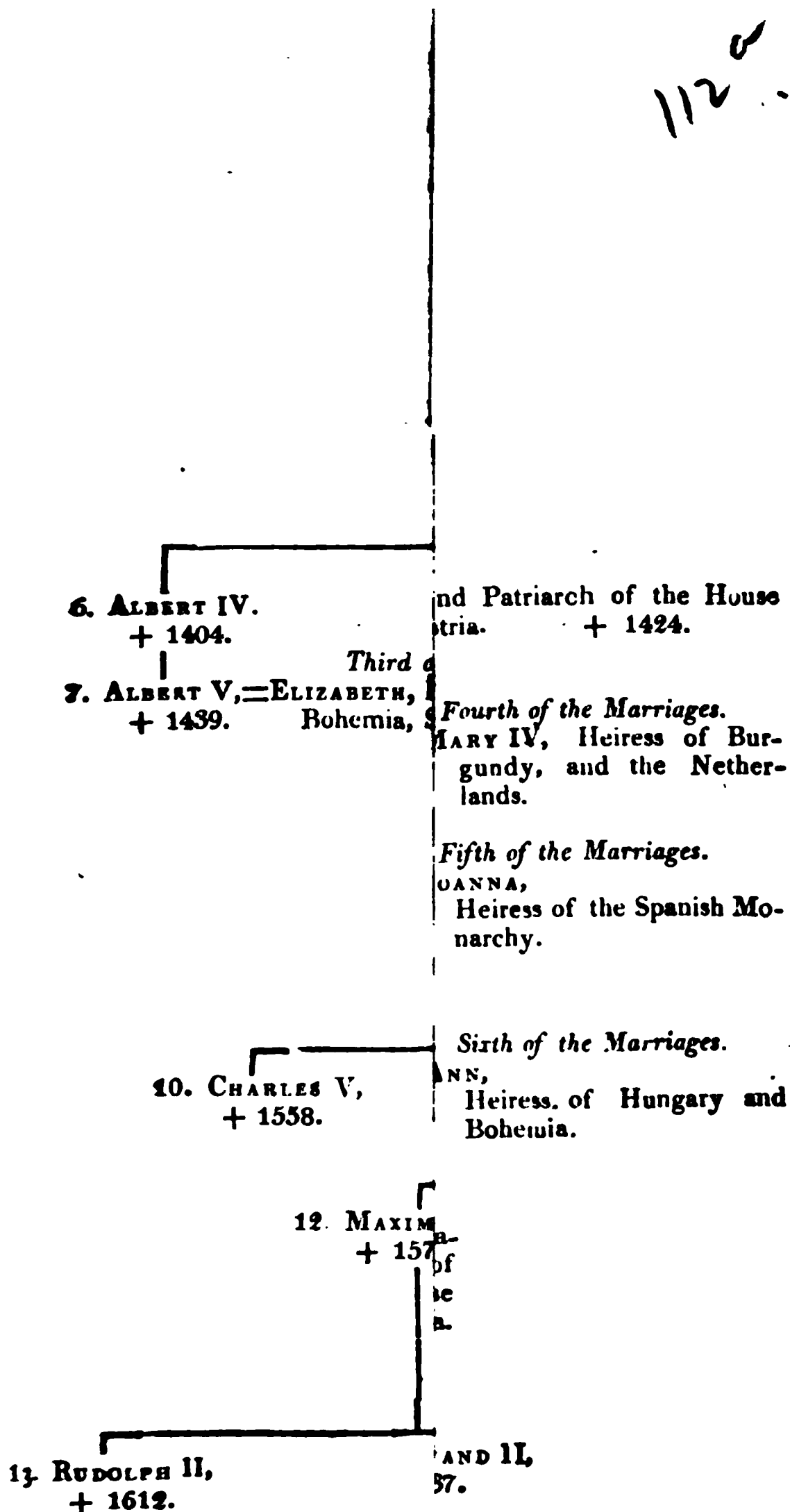
IN this period of the history of the princes of the house of Austria, nothing is so remarkable as THEIR FORTUNATE MARRIAGES. Six, in particular, have attracted the attention of historians: they have given rise to the celebrated distich,—

*“ Bella gerant alii! Tu, felix Austria, nube!*

*“ Nam, quæ Mars aliis, dat tibi regna, Venus.”*

By the following table it appears that Rudolph of Hapsburgh is the founder of the archducal family of Austria, and the First Patriarch of that house. On the decease and failure of issue of Albert, the fifth Archduke of that name, the resort was to his uncle Ernest: this makes Ernest its Second Patriarch. On the decease and failure of issue of Mathias, in 1619, the archducal title descended to Ferdinand  
the

he second, whose father was Charles the  
son of Ferdinand the first: this makes the



the second, whose father was Charles the son of Ferdinand the first: this makes the Charles, of whom we are speaking, the Third Patriarch of the Austrian family.

The table also shews their six fortunate marriages ;—that of Albert the first, with the heiress of Carinthia and the Tyrol ;—that of Albert the second, with the heiress of Ferrette in Alsatia ;—that of Albert the fifth, with the heiress of Bohemia and Hungary ;—that of Maximilian with the heiress of Burgundy, and the Netherlands ;—that of Philip the father of Charles the fifth, with the heiress of Spain, Naples and Sicily ; and that of Ferdinand the first, with the heiress of Bohemia and Hungary, which restored those kingdoms to the house of Austria, from which, after her former acquisition of them, they had past into another family.

Of these, the marriage of Maximilian

with the heiress of Burgundy and the Netherlands,' is the most remarkable. Mention has been made of the kingdom of Burgundy : the dutchy and county of Burgundy must be distinguished from it, and from each other. Both of them centered in Charles the bold ; and he also inherited the possessions of the dukes of Lower Lorraine and Brabant, of the earls of Flanders, and the counts of Hainault. Mary, his daughter and heiress, married Maximilian the first.—On the death of Charles the bold, Lewis the eleventh of France, seized on Burgundy, as an escheat, for want of a male heir, and united it, for ever, to the kingdom of France ; but Mary was permitted to carry the rest of her dominions into the house of Austria. The seizure of Burgundy by Lewis the eleventh, was sometimes the real, and sometimes the ostensible cause

' SEE NOTE XI.

of wars, which, with little interruption, lasted from the time of Maximilian's marriage to the middle of the last century.— Lewis the fifteenth, being at Bruges in 1745, exclaimed, on seeing the Mausoleum of Charles the bold, and Mary of Burgundy,— “ Behold the cradle of all former wars.”

If Preservation be as important as Acquisition, the recent marriage of the Archduchess Maria-Louisa must be considered the Seventh Fortunate Marriage of the House of Austria.

But, besides her acquisitions by her Six Fortunate Marriages, the house of Austria, during this period, obtained, by other means, a large increase of territories, particularly the Brisgau, near Freyburgh, by gift from the emperor Lewis of Bavaria in 1330, and the Burgau and some other districts in Suabia, under the emperor Maximilian the first, in 1505.

## III.

ONE of the most important events in the history of the Hapsburgh family, during this period, is THEIR UNSUCCESSFUL CONTEST WITH THE SWISS.

Nature herself has fixed the boundaries of Switzerland: separating her from Germany, by the Rhine; from Italy, by the Alps and the Rhone, and from France, by the Jura.

The Ambrones filled the territory on the Rhone; the Tigurenses, the territory between Zurich and the Rhine; the Tugeni, a territory of which Zug was the capital; and the Verbigenes, a territory between the Aar and the Reuss.

The Swiss are first known in history by the name of Helvetii; frequent mention of them is made in the account of the

irruption of the Cimbri. About fifty-seven years before Christ, they were subdued by Julius Cæsar: he annexed Helvetia to the Celtic Gaul: Augustus took it from the Celtic, and annexed it to the Belgic. In 69, Vitellius divided Helvetia into two prefectures, separated from each other by the Reuss.

About the end of the fourth century, the whole nation was almost extirpated by the Alemanni; and those, in 496, were expelled by Clovis.—The country was occupied by the Franks, and made a part of the Francic kingdom till 888, when, upon the death of Charles the fat, it was seized by Raoul, and annexed by him to the Transjuranan Burgundy. With the other part of that kingdom, it was united to the empire of Germany, by Conrade the second. On the dismemberment of the empire, a considerable portion of it became a part of the possessions of the dukes of Zeirenghen, a noble

family, which took its name from the castle of Zeirenghen, in the Black Forest near the Treysa. Next, but much inferior to them in power and influence, were the counts of Burgundy, Savoy, Hapsburgh and Kyburgh. On the extinction of the house of Zeirenghen, Switzerland became an immediate province of the empire, and was divided into many ecclesiastical and secular states. Several noble families, among whom the house of Hapsburgh was particularly distinguished, had large territorial possessions in this country. The towns of Zurich, Soleure, Basil and Berne, were imperial towns; the inhabitants of Uri, Schweitz and Underwald, were governed by their own magistrates; but justice was administered, at least in criminal cases, by officers appointed by the emperor, and called Avoyers. The emperor Rudolph conducted himself, in their regard, with justice and moderation; Albert, his son,



formed the design of bringing them to a total subjection to his family, and erecting them into a principality for one of his sons. In 1315, the Cantons of Uri, Schweitz and Underwald, confederated to assert their freedom, and thus laid the foundations of the celebrated Helvetic confederacy. In 1332, they were joined by Lucerne; in 1351, by Zurich and Glaris; in 1352, by Zug; in 1481, by Berne, Freyburgh and Soleure; in 1501, by Basle and Schaffhausen; and in 1513, by Appenzell. These thirteen towns, and the territories attached to them, form the republic of Switzerland: she ranked next to Venice.

With invincible perseverance, after sixty pitched battles, they secured their liberty: the Austrians were wholly expelled from Helvetia, and the castle of Hapsburgh, the original seat of the Austrian family, was rased to the ground.

IV.

**ANOTHER** event of importance, in this period of the history of the Hapsburgh family, is the **INVASION OF ITALY BY CHARLES, THE EIGHTH OF FRANCE.**

It will appear in the Notes, that the French princes of the house of Anjou had a claim to the kingdom of Naples, and that it was made over, by Charles of Anjou, to Lewis the eleventh. By that monarch, it was disregarded ; but his son Charles the eighth attempted the conquest of Naples. At the head of an army of twenty thousand men, and with an immense train of artillery, ammunition and warlike stores, he crossed the Alps. As he advanced, Florence, Pisa and Rome, submitted to him : he took quiet possession of Naples, and, for a time, gave law to every part of Italy. But he lost his new kingdom, in as little time as

he had spent in gaining it : the pope, the emperor, Ferdinand of Arragon, Isabella of Castile and the Venetians, joined in a league against him : he obtained a victory over them ; but it was of no other use than to open to him, a safe passage into his own territories. In a few months, he was stripped of all his conquests, and the troops, which he had left to guard them, were entirely expelled from Italy.

- He died soon after, leaving no child ; the duke of Orleans succeeded to the throne of France by the title of Lewis the twelfth. By him, the conquest of Naples was repeatedly attempted without success. These wars first introduced, among the sovereigns of Europe, the idea of that great object of modern politics, a balance of power : it amounts to a tacit league, which is understood to be always subsisting, for the prevention of the inordinate aggrandizement of any one state.

## V.

**ANOTHER** event of importance in this period of the Hapsburgh annals, is the *Rivalship which then first broke out, and which has subsisted till our times, between Austria and France.*

Among the six fortunate marriages of the house of Austria, we have mentioned that of Maximilian with Mary the heiress of Burgundy; and that of Philip, Archduke of Austria, with Jane, the daughter of Ferdinand and Isabella, and the heiress of the Spanish monarchy. Philip died in the life-time of the emperor Maximilian his father, leaving two sons, Charles and Ferdinand. Maximilian died in 1519. Thus, in the right of Mary, his grandmother, Charles was sovereign of those possessions of the house of Burgundy, which had not been usurped by France; in the right of Joanna, his mother, he was

sovereign of the whole Spanish monarchy ; and, in the right of his father, he was Archduke of Austria.

By the death of the emperor Maximilian, his grandfather, the empire of Germany became vacant. Charles aspired to it ; Francis the first entered the lists against him. Each pursued the contest with eagerness and ability. It was finally decided, by the unanimous vote of the electoral college, in favour of Charles. This preference shewn to his rival, in the face of all Europe, mortified Francis in the highest degree ; from this æra the rivalry between Austria and France may be dated.

## VI.

ANOTHER important event in this period of the history of Germany, is *the Division of the Territories of the Empire into Circles.*

The first division of Germany was into

its Upper and Lower, or Southern and Northern States, considering it as intersected by a supposed line, drawn eastwardly from the mouth of the Mayn. A subsequent division of it was made by its rivers, so that it was considered as parcelled into the countries severally bordering on each side of the Danube, the Rhine, the Weser, the Elbe and the Oder.

But these were rather geographical than political divisions of the country. With a view of forming certain generalities or large territories, consisting of different states, which, on account of their nearness to each other, might conveniently assemble, either to regulate their common concerns, or enforce the general laws and ordinances of the empire, Maximilian the first divided all Germany into ten parts,—the Circles of Bavaria, Franconia, Suabia, the lower Saxony, the lower Rhine, Westphalia, Austria, Burgundy, the upper Saxony and the

upper Rhine.—The Circle of Burgundy comprised the High Burgundy, or Franche-comté, and the seventeen provinces of the Low Countries; but this Circle was, by degrees, completely dismembered from the empire, so that the number of Circles was reduced to nine.

## VII.

ANOTHER important event in this period of the history of Germany, is the *Final Settlement of its Political Constitution*. It forms a body, of which the Emperor is the head, the States are the Members.

I. We have seen, that, during the Carolingian Dynasty, the empire was hereditary; and that, on the extinction of that Dynasty, the empire became, and has since continued elective. It is generally said, that during that Dynasty, and for some time after, the empire was altogether monarchical: this must be understood with a con-

siderable degree of restriction ; and, at all events, since Frederick II, the government has been partly monarchical, and partly aristocratic, the emperor being absolute in some instances, while, in others, his acts must have the consent of all the states of the empire.

2. The States are divided into three classes,—the College of Electors, the College of Ecclesiastic and Secular Princes, and the College of Imperial Towns : this division was finally established at Francfort in 1580. Their meeting is called a Diet. The Emperor is seated on a throne ; the electors of Mentz, Bavaria, and Brandenburg, on his right hand, the Electors of Cologne and Saxony, and the Elector Palatine on his left, and the Elector of Triers opposite to his person.

The Ecclesiastical Princes are seated on benches to his right ; the Secular Princes are seated on benches to his left ; the De-



puties of the Imperial Towns are seated on two benches which cross from the right to the left ; one of these benches is filled by the Deputies from the Imperial Towns on the Rhine, the other by the Deputies from the Towns in Suabia.

The three Colleges deliberate apart. When they are agreed on any point, and the emperor consents, it becomes a resolution of the empire : but, if the three colleges are not united, or the emperor refuses his consent to it, the measure drops.

As soon as the Diet breaks up, the Emperor publishes, in his name, a recess or minute of the resolutions passed at it ; exhorts the States to see them carried into execution ; and orders the tribunals to conform to them.

## VIII.

ANOTHER important event in this period of the History of Germany, is the establish-

ment of *The Imperial Chamber and the Aulic Council* by Maximilian I.—The Imperial Chamber was fixed at Worms in 1495 ; it was removed to Spire in 1533, and to Weslar in 1696, where it is now held. The president of it is appointed by the Emperor : the assessors, by the States : it has always been viewed by the Emperors with jealousy ; and, soon after its institution, Maximilian prevailed on the States to permit him to revive his Court Palatine, or, as it is generally called, the Aulic Council. With some exceptions, each of these courts has equal jurisdiction ; there is no appeal from one to the other, so that the appeal from each is to the Diet. During the vacancy of the throne, the powers of the Aulic Council are suspended ; but the Imperial Council acts under the Vicars of the Empire. From its superior activity, and the general superior ability of its Judges and Advocates, the Aulic Council

has

has engrossed almost the whole of the business, not specially reserved to the cognizance of the Imperial Council.'

' Thus far the writer had the assistance of *Tableau des Revolutions de L'Europe dans le Moyen Age*, par M. Koch, Strasburgh, 3 vol. 8vo. and found it of the greatest use.

## PART VI.

**The Division of the House of Hapsburg into its Spanish and German Lines, till the Final Extinction of the latter, in the House of Lorraine.**

1558—1736.

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**THE principal events in the history of Germany during this period, are**

- |   | <b>Began.</b> | <b>Ended.</b> |
|---|---------------|---------------|
| I. The war of thirty years - - -  | 1618          | 1648          |
| II. The war for the Succession of Spain   | 1700          | 1713          |
| III. The war with the Porte - - -   | 1714          | 1718          |
| IV. The war for the Succession of Poland  | 1733          | 1735          |
| V. The marriage of Maria Theresa, the<br>eldest of the two daughters, and<br>surviving children of the Emperor<br>Charles the sixth, with Francis<br>Stephen the Duke of Lorraine, and<br>the wars for the Succession of<br>Austria - - - - - | 1736          | 1748          |
| VI. And the final decline of the Pope's<br>temporal power.  |               |               |

## I.

THE WAR OF THIRTY YEARS was principally owing to the religious disputes of the sixteenth century. Very soon after Luther's first attack on the see of Rome, the Reformation was established in Saxony, Livonia, Prussia and Hesse-cassel; in several Imperial Towns; in Friezeland and Holland, in several of the Swiss Cantons, in Pomerania, Mecklenburgh, Anhalt, Sweden, Denmark, Norway, England and Scotland. Its progress in the empire is particularly connected with the subject of these sheets.

At the diet of Augsburgh in 1530, the protestant princes of Germany delivered their confession of faith; and afterwards, at Smalcald, entered into an offensive and defensive league against the emperor. Being sensible that they were unable to resist him, they engaged the French monarch in their

A view of the fatal effects which this animosity has produced in the christian world, has often made wise and peaceful men endeavour to *reunite all denominations of christians in one religion*. With this view, at an early period of the Reformation, *Melancthon* formed his celebrated distinction of the points in dispute between Roman Catholics and Protestants, into the Essential, the Important, and the Indifferent :—in a latter period of the Reformation, *Grotius*, the most learned man of his age, employed the last years of his life in projects of religious pacification : towards the end of the seventeenth century, a correspondence for the reunion of the Roman Catholic and Lutheran churches was carried on between *Bossuet* on one side, and *Leibniz* and *Molanus* on the other : it may be seen in the Benedictine edition of the works of *Bossuet*, and Mr. Dutens's edition of the works of *Leibniz*. In the beginning of the last

It is evident, that, at one time more than another, the public mind may be disposed to peaceful councils, and to feel the advantage of carrying mutual concession, as far as the wise and good of each party wish them carried. Perhaps the time is now come :

The soul's dark cottage, batter'd and decay'd,  
 Lets in new lights through chinks which time  
 has made.

WALLER.

Through the flaws and breaches, the yawning chasms (as they are termed by Mr. Burke), which the events of the times have made in the civil and ecclesiastical institutions of almost every country, a flood of light seems to break in, and to point out to all who invoke the name of Christ, the expediency of mutual forbearance, mutual good humour, and a general coalition in defence of their common christianity.'

' A short account of the Epistolary Correspondence  
 between Bossuet and Leibniz for the Reunion

of the Roman-catholic and Lutheran churches is given in the Author's Life of Bossuet. —A very interesting account of the attempts which have been made to effect an union of the Protestant churches among themselves, is given by Mosheim, 17 Cent. Sec. II. Part II. ch. I.

## II.

**THE WAR FOR THE SUCCESSION OF SPAIN** began in the year 1700, on the death of Charles the second.

Philip the fourth, the father of Charles the second, was twice married. His first wife was Isabel or Elizabeth, the daughter of Henry the fourth of France. By her he had a daughter, Maria-Theresa, the wife of Lewis the fourteenth; his second wife was Mary-Ann, the daughter of the emperor Ferdinand: by her he had Charles the second, his immediate successor, and Margaret, the wife of the emperor Leopold. Lewis the fourteenth had issue by Maria-Theresa, Lewis the dauphin: he died in his father's



life-time, leaving issue Lewis, the celebrated duke of Burgundy, and Philip the duke of Anjou. The issue of Leopold by Margaret was Maria-Antoinetta, who married Maximilian-Emanuel, the elector of Bavaria, by whom she had issue Ferdinand-Joseph. These descents and the times of the deceases of the persons mentioned in them, will appear from the following table.

The persons from whom the pretendants to the Spanish succession made their claims, are marked in it by a large Roman numeral over their names.

**CHARLES** the second, by his will, bequeathed his dominions to Philip duke of Anjou and his heirs male, on this special condition, that the crowns of France and Spain should never unite in them ; failing this line of heirs, he limited the succession to the Duke of Berri, and his heirs male, on the same condition : failing those, to the Archduke Charles and his heirs male, on a similar condition, that the empire and the crown of Spain should never unite in them ; and, failing that line, to the Duke of Savoy.

If Charles the second had a right to dispose of his dominions by his will, the claim of the duke of Anjou was incontestable : if he had not that right, they belonged to the person, who could make a title to them by a prior gift, or by heirship.

1. The first Pretendant was the Dauphin : —there having been a total failure of issue

of Margaret, the younger sister of Charles the second, and the English exclusion of half blood from inheritance being wholly unknown in the law of Spain, the claim of the Dauphin as son and heir of Maria-Theresa, the wife of Lewis the fourteenth, would have been indisputable, if, upon her marriage, she had not, by a solemn act, executed with the approbation of the court of Madrid, renounced her pretensions to the throne of Spain.

2. If that branch were excluded, and primogeniture allowed in the succession of females to the crown of Spain, the next resort was to Lewis the fourteenth as son and heir of Ann-Mary, the eldest daughter of Philip the third, and the wife of Lewis the thirteenth. To him, a similar renunciation of Ann-Mary was objected.

3. The next resort was to the emperor Leopold, as son and heir of Mary-Ann, the youngest daughter of Philip the third,

and the wife of the emperor Ferdinand the third. He urged two other titles ; one, as heir male of Ferdinand, the brother of Charles the fifth, to whom and to whose male posterity, in default of issue male of Charles the fifth, he contended the crown of Spain ought to revert, in consequence of a family settlement executed by Charles the fifth and Ferdinand, which, on failure of issue male of one, limited the succession to the issue male of the other of them ; -- his other title arose from a settlement alleged by the emperor to have been executed by Philip the fourth, by which, on failure of issue male of his body, Philip the fourth had limited the succession to Mary-Ann his sister.

4. The descendants of Catherine the duchess of Savoy formed the fourth class of pretendants ; they founded their claim on a settlement supposed to be executed

in her favour by Philip the second, or by Charles the fifth, or by both of them.

Such were the claims of the different competitors for the Spanish succession.

The war, which they occasioned, was terminated in respect to all the powers in league against France, except the empire, by the peace of Utrecht in 1712, and, in respect to the empire, by the congress of Radstadt, in the following year. So far the event of it was favourable to the house of Bourbon, that Philip the duke of Anjou was seated on the throne of Spain, and was allowed to retain the Spanish possessions in America. He made a formal renunciation of his rights to the crown of France ; and both the duke of Berri, and the duke of Orleans, renounced their rights to the Spanish monarchy. It was a fundamental principle of the constitution of France, that by accepting any foreign sovereignty, a prince

prince of the blood forfeited his right to the throne of France. To prevent the effect of this principle on the rights of the duke of Anjou, Lewis the fourteenth had granted to that prince, on his accession to the throne of Spain, letters patent, which preserved to him, his rights to the throne of France.—These, by the treaty of Utretcht, he was compelled to revoke; and, on failure of issue of Philip of Anjou, the crown of Spain was assured to the house of Savoy. A large portion of the other possessions of Spain was dismembered from her: the house of Austria had the Netherlands, the Milanese, Naples, and Sardinia: Savoy received the eventual succession of Sicily, exchanged seven years after for Sardinia; England acquired Gibraltar, Minorca and Newfoundland; and Holland obtained a barrier of strong towns in the Netherlands to secure her against France. These were great sa-

crifices ; but much better terms might have been obtained by the allies, if the intrigues of the tories had not checked their career of success, and deprived them of the fruit of their victories. Still, the military glory which England acquired by her victories on the continent, during the war for the Spanish Succession, and the increase of territory, both in Europe and America, which she acquired by the peace of Utrecht, raised her to a continental rank and consequence, which she had not enjoyed before. Her naval importance rapidly increased, and the powers of the continent began to view it with something of that jealousy, with which they had reviewed the first strides of Lewis the fourteenth to power. They began to think that the English dominion of the seas was as inconsistent with a general balance of power, as the extensive territorial conquests, and acquisitions of the French monarchs.

## III.

**BUT** the attention of Austria was, at this time, wholly engaged in her disputes with **THE PORTE**. To wrest from the Venetians, their possessions in the Morea, had long been a favourite object of the Ottoman power. In 1715 they began to put their plan for the conquest of them into execution ; and they succeeded in it so well, that, before the end of the campaign, they had conquered, from the Venetians, the whole of the Morea, and the Island of Candia ; and, early in the ensuing year, laid siege to Corfu. This alarmed the Christian powers, and the pope, the emperor, and the king of Spain, entered into a confederacy against the Porte. The campaigns of 1716 and 1717 were very glorious to the arms of the emperor ; by the battle of Peterwaradin, prince Eugene secured Hungary, and con-



quered the whole of the Temeswar for the emperor. The siege of Belgrade completed his glory. It was garrisoned, says M. de Voltaire, in his Age of Lewis the fifteenth with 15,000 men ; and prince Eugene, when he besieged it, was himself besieged by the Turks, who had a larger army than his own. Finding himself, in the same situation, in which Cæsar found himself, at the siege of Alesia, he extricated himself in the same manner, by first beating the enemy in the field, and then taking the town. This succession of brilliant victories compelled the Porte to sue for peace. Under the mediation of England, a congress was opened at Passarowitz, a small town in Servia, and a peace was soon concluded on the general basis of the *uti possidetis*. The emperor retained the Temeswar, Orsowa, Belgrade, all Wallachia within the river Alutha, and a great part of Servia ; the Turks retained the Morea and the Venetians, some places in Dalmatia

and the Island of Cerigo, in the Archipelago.

#### IV.

THE WAR FOR THE SUCCESSION OF POLAND arose from, the dethronement of Augustus, the king of Poland, by Charles the twelfth ; and by his causing Stanislaus Levinski to be elected king of Poland in the place of Augustus. After the defeat of Charles the twelfth at Pultowa, Augustus re-ascended the throne ; Stanislaus escaped from Poland in disguise ; and, for some years, lived in exile and in great want. Lewis the fifteenth married his daughter ; and, on the decease of Augustus, caused Stanislaus to be re-elected. Russia, Austria, and the empire in general, supported Augustus : France, Spain, and Sardinia, supported Stanislaus. The war began in 1733, and ended in two years. Augustus, the

son of the deceased king, obtained the throne of Poland ; Stanislaus recovered his patrimony ; was allowed to retain the title of King, and Lewis the fifteenth assigned to him Lorraine for his residence : the duke of Lorraine was sent into Tuscany, which, together with Parma, was taken from Spain, whose king, Philip of Anjou, had married the heiress of these two dutchies. Don Carlos, the eldest son of that marriage, was indemnified by the crowns of Naples and Sicily, with this special condition, that they should never be united to that of Spain ; and the king of Sardinia gained several districts in the Milanese.'

' In this Section, two works have been particularly followed, *Elemens d'Histoire Générale, seconde partie*, of the *Abbé Millot* ; and the *Droit public* of the *Abbé de Mably*.

## V.

The commencement of the DECLINE OF THE POPE'S TEMPORAL POWER has been mentioned.—It was wholly rejected in every country, in which the Reformation was established; and, to all appearance, would have been as quickly rejected by the states, which retained their spiritual obedience to the see of Rome, if, soon after the commencement of the Reformation, an event, or rather a combination of events, had not taken place, which, for a time, supported its falling fortunes.

After several viscissitudes of persecution and toleration, the Calvinists obtained a legal settlement in France, and began even to attract the favours of the Court: the Roman Catholics naturally united in opposition to them. This produced one of the most celebrated events in modern history;—the League of France. Almost every

Catholic in that kingdom entered into it; the house of Guise, an illustrious branch of the family of Lorraine, placed themselves at its head, and it soon found an active friend in Philip the second, the most powerful monarch of his time. The Guises descended from Charlemagne; they appear to have been attached, by principle and inclination, to the Roman Catholic cause; but probably would not have embarked their fortunes in its support, if, by doing it, they had not hoped to wrest the crown from the House of Bourbon; and to restore it, in their own persons, to the House of Charlemagne. On the other hand, Philip the second was aware of the powerful enemy, whom the House of Austria would always meet with, in the French, if they were united among themselves: he strove therefore to throw France into confusion. This cemented the league: and something of the kind, though of a very inferior degree, took place in every state in

christendom, where there was a conflict between a Roman Catholic and a Protestant party. It is obvious, how greatly the Catholic party stood in need of the countenance and assistance of the Court of Rome: this, for a time, preserved to the Popes their temporal power, in the states, who acknowledged their spiritual supremacy. The influence, which this gave them, made them venture on those enormities which now excite so much astonishment.—the bulls, by which they absolved the subjects of Henry the fourth of France, and our Elizabeth, from their allegiance; and their concurrence in the League.

In proportion, as Henry the fourth triumphed over the League, and the Spanish party lost its ascendant in Europe, the Pope's influence subsided; so that at the beginning of the eighteenth century, little more, than the *magni nominis umbra*, remained to the Popes, of that temporal power which

at one time or other, had shaken every throne in Europe.

In this last stage of its existence, four events deserve particular consideration :

1st. The Venetians claim the merit of being the first state, who openly contested the Pope's assumption of temporal power, and of triumphing in the contest, without a schism. This was the result of the celebrated difference with Paul the fifth;—in consequence of their refusing to release two ecclesiastics, who had been thrown into prison for murder, that haughty pontiff laid the territory of Venice under an interdict, and continued it in force for a year. Through the interference of Henry the fourth, he recalled it; the Venetians received his ambassador with the greatest marks of respect, but absolutely refused the absolution, which he offered them.—2dly, The good sense of Cardinal Bellarmine then shewed him, that

the time was come, when the lofty language, with which the Popes urged their temporal pretensions, would no longer be endured. He, therefore, proposed a middle opinion:—rejecting the Pope's claim of a right to interfere in concerns merely temporal, he claimed for them, a right to the use of temporal power, both in temporal and spiritual concerns, if the good of religion required it. Perhaps the distinction is merely verbal, but his softening the language of the claim shewed his apprehensions, that, in the extent in which it had been formerly asserted, it was no longer supportable.—

3dly, About forty years after Bellarmine's work appeared, the War of Thirty Years was terminated by the peace of Westphalia; several articles of it were favourable to the Protestant religion. Pope Innocent, by a protestation, in the form of a bull, took upon him to annul them; but neither Catholics nor Protestants paid the slightest attention



to his protestation. 4thly, In the year 1682, the clergy of France published their celebrated Declaration. It is expressed in four articles; by the first they declare, that  
 “Kings and Princes are not subject, in tem-  
 “poral concerns, to ecclesiastical power;  
 “that they cannot be deposed, directly or  
 “indirectly, by the authority of the keys of  
 “the church, nor their subjects discharged  
 “from the allegiance and duty they owe  
 “to them.”

The three other articles became subjects of dispute; but, in the declaration of the independence of the civil powers on the spiritual, in temporal concerns, the Roman Catholics, on this side of the Alps, universally acquiesced.

That such a claim was ever made is one of the greatest misfortunes which have befallen christianity. The scenes in which the Popes were engaged, in consequence of

it, certainly present the dark side of the papal character. In most other points of view, they appear to advantage, both in their sacerdotal and their regal capacity. That some of them were infamous by their crimes and their vices, is true : it is also true, that much more than an equal number of them have been eminently distinguished by talents and virtue ; and that, collectively considered, they will not suffer in comparison with any series of sovereigns. Voltaire observes that, in the dark ages, there was less of barbarism and ignorance in the Pope's dominions, than in any other European state : much certainly was done by them, in every part of christendom, to protect the lower ranks against their oppressors, to preserve peace among Kings and Princes, and to alleviate the general calamities of the times. Their exertions for the conversion of infidels were unremitted : few nations can read the his-

tory of the first introduction of christianity among them, without being sensible of their obligations to the Popes. This is acknowledged by all candid Protestants, “ Quod  
 “ ad conversionem ethnicorum attinet, mis-  
 “ siones Romanorum, quantum in me est,  
 “ omni ope consilioque promovere soleo :  
 “ neque invidiæ aut obtrectationi locum do ;  
 “ gnarus, evangelii predicationem, a quo-  
 “ cunque demum fiat, non sine fructu aut  
 “ efficaciâ manere.” (*Ludolfi epistola ad Leibnizium, Op. Leib. Ed. Dutens, vol. vi. P.I. 140.*) This is the genuine language of good sense and conciliation. No conversion was ever made, by proving to a Roman Catholic, that his religion may be found in the Name of the Beast, or by proving to a Protestant, that Protestants were prefigured by the Locusts which issued from the bottomless pit, and darkened the heavens and the earth.

## VI.

**WE** now come to the last link of the Hapsburgh chain.—It has been observed, that the *House of Lorraine* descended from Eticho, duke of Suabia and Alsatia, in 700 ; and that Hugh, a descendant from him in the fourth degree, had two sons, Everard, the general parent of the house of Lorraine, and Guntram, the general parent of the house of Hapsburgh. At the distance of about seventeen descents from Everard, we reach Renatus the second, who died in 1508, leaving two sons, Anthony, the patriarch of the latter dukes of Lorraine ; and Claude, the patriarch of the house of Guise. From the house of Guise the branches of Mayenne, Joyeuse, Aumâle and Elbœuf, proceeded. The whole of this illustrious house is now represented by the princes of Vaudemont and Lâmbesc.

To Anthony duke of Lorraine, Francis-

Stephen was seventh in descent. In 1736, he married Maria-Theresia, the eldest of the two daughters, and surviving children of the emperor Charles the sixth. In 1713, by a testamentary disposition, called the Pragmatic Sanction, guaranteed by most of the European powers, the emperor had regulated the succession to his hereditary dominions, settling them first on the males, and afterwards on the females, according to seniority. But he was no sooner dead, than the succession was disputed ; and the dispute gave rise to a long and bloody war. During the greatest part of it, France, Spain, Bavaria, Naples and Parma, were on one side ; Austria, England, Holland and Savoy, on the other. Finally, the arms of Maria-Theresia triumphed :—with the exception of Silesia and Parma, she obtained all the possessions of her father, and Francis-Stephen, her husband, was elected emperor.

In

In Charles the sixth the male stock of the imperial line of the house of Hapsburgh expired, after filling, without interruption, the throne of Germany, and giving sovereigns to many other thrones during the space of three hundred years :—in the late emperor Joseph, his grandson, the two lines of the Hapsburgh family, after a separation of eight hundred years, were re-united. This will appear by the annexed pedigree.\*

\* See Table IX, p. 164.

## PART VII.

The Period, between the Marriage of MARIA-THERESIA, and the Commencement of the FRENCH REVOLUTION.

1736—1787.

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It remains to give some account of *the Lorraine-Austrian Emperors, from the marriage of Maria-Theresia of Hapsburgh with Francis duke of Lorraine, to the commencement of the French Revolution.*

VII. 1. ON the decease of Charles VI, Maria-Theresia, his only daughter, succeeded to a splendid inheritance.—Speaking generally, *at the time of her accession, the House of Austria was possessed of the following territories, and held them by the following titles :*

1st. Austria, Stiria, Carinthia, Carniola and the Tyrol, had been acquired to her by

the Conquests of Rudolph of Hapsburgh, and by the marriage of his son, Albert, with the heiress of those possessions :

2d. The Netherlands had been acquired to her, by the marriage of Maximilian the first, with Mary, the heiress of the House of Burgundy, and subsequent treaties :

3d. Some territories in Suabia, particularly the Burgau, had been acquired to her in consequence of the emperor Maximilian's reuniting them to the Empire :

4th. Bohemia, Silesia, Moravia, and Hungary, with Croatia, Sclavonia and Dalmatia, had been acquired to her by the marriage of the emperor Ferdinand the first, with Ann, the heiress of Bohemia and Hungary :

5th. She had acquired Brisgau, by the grant of the emperor Lewis of Bavaria ;

6th. The Mantuan, by confiscation, under Joseph I ;

7th. And the Milanese, by the treaty of Rastadt.



Francis-Stephen of Lorraine, the husband of Maria-Theresia, died in 1764; she survived him fifteen years, and died in 1780; her descendants will appear in the following Table.



piece-

information of this project, the King of Prussia invaded Saxony and Bohemia : this was the origin of the war of seven years. The Aulic Council voted his conduct a breach of the Public Peace ; and the Diet of the Empire passed a decree for enforcing the Execution of the Resolution of the Aulic Council. This made it that kind of war which the Publicists of Germany call a War of Execution of the Empire. Afterwards, an attempt was made to bring before the three colleges of the Empire the question, whether the King of Prussia, in his capacity of Elector of Brandenburg, ought not, on account of his alleged breach of the public peace, to be put to the Ban of the Empire : but such measures were taken by the King's adherents, as effectually kept it from regular discussion.

The event of the war is well known :— after seven years of war, in all its horrors, conferences for peace were opened at

Hubertsburgh, and soon after a treaty was concluded between the Empress Queen and his Prussian Majesty : the substance of it was, that a mutual restitution and oblivion should take place, and that each party should sit down in the same situation in which he began.

“ It is impossible,” says Mr. Dornford, in a note in his excellent translation of Professor Pütter’s “ Historical Development of the Political Constitution of the Germanic Empire,” vol. iii. p. 113, “ to give the  
 “ reader a more just idea of the calamities  
 “ of this dreadful war, than from the follow-  
 “ ing elegant and descriptive letter written  
 “ by her present Majesty, when princess of  
 “ Mecklenburg, to the King of Prussia.

“ May it please your Majesty,

“ I am at a loss whether I should  
 “ congratulate or condole with you on your  
 “ late victory, since the same success which

“ has covered you with laurels has over-  
 “ spread the country of Mecklenburg with  
 “ desolation. I know, Sire, that it seems  
 “ unbecoming my sex, in this age of vicious  
 “ refinement, to feel for one's country, to  
 “ lament the horrors of war, or wish for the  
 “ return of peace. I know you may think  
 “ it more properly my province to study the  
 “ arts of pleasing, or to inspect subjects of  
 “ a more domestic nature: but, however  
 “ unbecoming it may be in me, I cannot  
 “ resist the desire of interceding for this  
 “ unhappy people.

“ It was but a few years ago, that this  
 “ territory wore the most pleasing appear-  
 “ ance, the country was cultivated, the  
 “ peasant looked cheerful, and the towns  
 “ abounded with riches and festivity. What  
 “ an alteration, at present, from so charm-  
 “ ing a scene! I am not expert at descrip-  
 “ tion, nor can my fancy add any horrors  
 “ to the picture; but surely even con-

“ querors themselves would weep at the  
“ hideous prospect now before me.

“ The whole country, my dear country!  
“ lies one frightful waste, presenting only  
“ objects to excite terror, pity, and de-  
“ spair. The business of the husbandman  
“ and the shepherd are quite discontinued.  
“ The husbandman and the shepherd are  
“ become soldiers themselves, and help to  
“ ravage the soil they formerly cultivated.  
“ The towns are inhabited only by old men,  
“ women, and children. Perhaps, here and  
“ there, a warrior, by wounds or loss of  
“ limbs rendered unfit for service, left at  
“ his door ; his little children hang around,  
“ ask the history of every wound, and  
“ grow themselves soldiers before they find  
“ strength for the field. But this were  
“ nothing ; did we not feel the alternate  
“ insolence of either army, as it happens  
“ to advance or retreat in pursuing the  
“ operations of the campaigns. It is im-

“ possible to express the confusion, which  
 “ even those who call themselves our friends  
 “ create. Those, from whom we might  
 “ expect redress, oppress us with new ca-  
 “ lamities. From your justice, therefore, it  
 “ is that we expect relief. To you even  
 “ women and children may complain, whose  
 “ humanity stoops to the meanest petition,  
 “ and whose power is capable of repressing  
 “ the greatest injustice.”

VII. 3. The second event during this pe-  
 riod was *the war, occasioned by the extinction*  
*of the House of Bavaria.*—It ended in the  
 peace of Sax-Teschen, by which, the right  
 of the Elector Palatine to the succession  
 was allowed, with the exception of some  
 districts of land between the Danube, the  
 Inn and the Salze, which were ceded to  
 Austria.

VII. 4. The next event during this pe-  
 riod, was *the Partition of Poland.*—That  
 part of Poland, which lies on the west of

the Vistula, belonged to the antient Germany; the remainder of it belonged to the antient Sarmatia Europæa. The nation is of Slavonic origin: the word Pole, in that language, signifies a plain, and was applied to the immense tract of level country, of which, with scarcely any exception, the whole of Poland consists. The sovereigns of Poland are generally divided into four dynasties: I. The House of Lesko; II. The House of Piast; III. The House of Jaghelon; and IV. The different families, from whom the princes have been taken, who succeeded that house. The history of the first Dynasty, and of the first princes of the second Dynasty, is fabulous: with the third Dynasty, the history of Poland becomes more interesting. Poland was always a powerful barrier against the Ottoman irruptions, and frequently triumphed in the centre of Germany, and on the Rhine: she is now blotted out of the nations of



Europe. By successive partitions in 1772, 1793 and 1796, the whole kingdom became divided among the Austrians, Prussians, and Russians;—each sovereign seized the territory adjoining his own; that, seized by Austria, was the most populous; that, seized by Prussia, was the most commercial; that, seized by Russia, was the most extensive.

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## PART VIII.

From the commencement of the FRENCH REVOLUTION till the EXTINCTION OF THE GERMAN EMPIRE.

1787—1806.

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WE are now come to the last page of the history of the Empire of Germany.—  
THE EFFECTS PRODUCED IN IT BY THE FRENCH REVOLUTION.

For this purpose, it may be useful to return to that period of the history of France,

in which it was left in one of the preceding sheets—the accession of Hugh Capet to the throne of France ; and to point out the successive alterations, which took place in the constitution of France, between that period and the late revolution.

These are,—1st, the re-union of the Great Fiefs to the crown ; 2dly, the elevation of the commons to a third order in the state ; 3dly, the substitution of the States-General for the assemblies on the Champ de Mars ; 4thly, the substitution of the Three Orders of the State for the States-General ; 5thly, the increase of the authority of the Parliament of Paris ; and 6thly, the absolute power of Lewis the fourteenth. We should also notice, 7thly, the conflicts during this period of the clergy, the nobility, and the parliament, with the crown ; and 8thly, the privileges retained by the clergy and nobility.

## I.

1. MENTION has been made of the usurpations of the great vassals of France, and of their rendering their dignities and governments hereditary in their families.

The paternal domains of Hugh Capet consisted of the dukedom of Paris, and the Isle of France. These, with the royal domains, which he acquired by his usurpation, extended from the mouth of the Somme over a considerable tract of the country on the south of Blois, leaving Normandy and Brittany on the west ; and Champagne, the Nivernois, and the Berri, on the east. After Hugh Capet acquired the throne, he used his utmost efforts to restore it to its antient splendour ; but, throughout his reign, he was obliged to acquiesce in the hereditary descent, which his great vassals claimed for their possessions.

The leading object of all his successors, was to *re-unite to the crown, the possessions*

*usurped from it by its Great Vassals; and they pursued it with unvaried attention. By treaties, marriages, successions, purchases and conquests, they accomplished their object so far, that, previously to the accession of Lewis the thirteenth, the seventy-two great fiefs of France were united to the crown, and all their feudal lords attended at the states-general in 1614, the last that were held till the memorable assembly of them in 1789. This system of re-union was completed by the conquests of Lewis the fourteenth, and by the acquisition of the provinces of Lorraine and Bar to the crown of France in 1735. A chronological account of these re-unions may be seen in the annexed Table X.*

*2. To lessen the power of the vassals, the French monarchs raised the commonalty. During the Merovingian and Carlovingian dynasties, the classes of society, below the milites, consisted chiefly of freemen engaged in husbandry, villeins, or persons attached*

to the soil of their lords with some property of their own ; and *Serfs* or *Slaves*, who were in the lowest state of public and private slavery.

Lewis the fat enfranchised the slaves and villeins in all the towns which belonged to the crown. Thus he raised them to the rank of freemen engaged in husbandry, and brought them under the protection of the law ; his vassals imitated his example. According to the notions of justice in those times, it was a branch of the royal prerogative to administer justice in all cases, which the law of tenure did not bring under the cognizance of the feudal courts. The French monarchs appointed commissioners to exercise, in their names, this part of their royal prerogative ; and, twice in a year, they made a judiciary circuit of the kingdom.

By degrees, the monarchs advanced a step farther :—in the settlement of differences among themselves, the sub-vassals  
had.

To face p. 176.

The following **CHRONOLOGICAL** TO THE CROWN, is translated from the  
*Paris 1759.*

OF FRANCE.

B. . . . . Visc. . . . . Viscounty.  
C. . . . . T. . . . . Town.

KINGS.	Y R	Great Fiefs.	Reunions.
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obtained admission. It is anticipating both events and language, to call these states, the three orders of the state : the first states, (not the first order of the state), were those governed by the chief ecclesiastical vassals ; the second states, (not the second order of the state), were those governed by the chief lay vassals ; the third states, were civil communities, governed by municipal officers. Both the chief ecclesiastical and the chief lay vassals brought with them their own vassals to the assembly ; the communities appeared by their deputies. Such was the original constitution of the *States General*.

4. In proportion to the depression of the chief vassals, the general body of the clergy rose into notice and power, and became *the Order of the Clergy*, and the general body of the nobles rose into notice and power, and became *the Order of the Nobility* : and thus the assembly of the states, retaining their name, but consisting of members of a very different character,

became an assembly of *the Three Orders of the State*.

It is observable, that, notwithstanding the two last revolutions, each order retained much of the spirit of their predecessors. Like the governors of the ecclesiastical states, the clergy, except on some remarkable occasions, as in quarrels between Philip the Fair and Boniface the eighth, favoured the pretensions of the popes;—like the governors of the lay states, the nobility sought to throw off their dependence on the crown; like their husbandmen predecessors, the third order, notwithstanding its advancement, felt its inferiority to the two other orders, and shewed an habitual submission to them.

5. But in the mean time a new power arose in the state. When Hugh Capet usurped the throne, he had a large paternal territory, of which, as duke of Paris and the Isle of France, he was the feudal lord; and which, like other feudal baronies, had



its plaids or parliament. This territory descended to his successors; and, as the great fiefs were severally re-united to the crown, *the plaids or parliament of Paris became the plaids or Parliaments of those fiefs.* At first, particularly while judicial combats lasted, the parliaments administered justice with a kind of military law; insensibly the parliament became a court of civil justice and civil forms.—Those required knowledge and application, and thus the *Gens de loi*, a class of persons wholly unknown to the ancient constitution of France, became a separate class of persons, and something like a distinct order in the state. By degrees, the parliament became a national court for the administration of justice throughout the kingdom, particularly in great causes, a general court of appeal, and a court of record to register the king's decrees.

6. Under the meridian glories of Lewis the fourteenth both the order of the clergy and the order of the nobility wholly lost

their territorial power and influence; the third estate scarcely felt its existence, and the parliament was a mere tool of the crown: then, in the largest sense of the word, *the monarch became absolute*. "*L'état est moi*," is an expression attributed to Lewis the fourteenth.

7. *At different periods of the Capetian dynasty, each of the orders of state had its conflict with the crown.* In the quarrels of pope Boniface the eighth with Philip the Fair, some of the clergy showed a strong inclination to support the former, but the general body was rivetted to their allegiance by the spirit of the monarch, and the firm adherence of the nobility and third estate to his cause. During the league, the clergy took part against the crown; but, from the reign of Henry the fourth, their temporal power declined.

Many were the attempts of *the nobility* to regain their former consequence. With that view they engaged in the League of Public

Good, under Lewis the eleventh; joined in the Holy League in the reigns of Francis the second, Charles the ninth, Henry the third, and Henry the fourth; thwarted the attempts of Lewis the thirteenth, to subdue the Huguenots; and, in the minority of Lewis the fourteenth, kindled the war of the Fronde.

The *parliament* showed an equal spirit of resistance to the monarch's will. They assumed, and were allowed, the privilege of remonstrating against the decrees which the king sent them to register, if they professed to discover in them any thing contrary to the interest of the state, identifying it, in expression, with the interest of the monarch. In the time of the league, they acquired great consequence: they positively refused to register a decree of Henry the fourth; and announced to him that "they would always be guilty of that crime, when his will should stand in opposition to his interest." Cardinal de Richelieu reduced

them to the lowest state of submission: but they revived in the troubles of the Fronde.

It is observable that neither the clergy nor the nobility recovered from the state of dependence to which they were reduced by Lewis the fourteenth; but the parliament soon rose with fresh vigour. Even in the life-time of that monarch, they became so powerful, that it required much exertion and management to make them register his decree for legitimating his natural offspring; they set aside his will, and were constantly at variance with his successor, during the last years of his reign.

8. It must also be observed that, though the Clergy and the Nobility had been thus deprived of the whole of their territorial independence, they had been permitted to hold their rank among the orders of the state, the privileges annexed to it, and almost an exclusive title to the favours of the court. This gave them a superiority

over the third order, which was severely felt by its members in every public and private occurrence.

In 1614, M. de S  nepey presented to Lewis the thirteenth, an address from the order of nobility assembled at the states-general, in which, after much pompous declamation, on the services and rights of the nobility, he thus expresses himself:—" I  
 " should never finish, were I to relate to  
 " his majesty, all, that antiquity has taught  
 " the nobility, respecting the pre-eminence  
 " which birth gives to their order;—an order  
 " so distinct from the rest of the people,  
 " that they never can bear any kind of com-  
 " parison. The third estate is composed of  
 " the people in the towns, and in hamlets:  
 " almost all of them owe homage, and are  
 " subject to the courts of the other two  
 " orders, either as citizens, burgesses, trades-  
 " men, or mechanics, or in virtue of some  
 " offices. These are they, who losing sight  
 " of their proper conduct, unmindful of

“ their duty, and not acknowledged by those  
 “ they represent, venture to compare them-  
 “ selves to Us!—I am ashamed,” continues  
 the orator, “ to relate to your majesty the  
 “ expressions, which have again offended  
 “ us. They compare your state to a family  
 “ consisting of three children. They say  
 “ the clerical order is the *eldest*, ours the  
 “ *puîné*, and themselves the *cadets*. Into  
 “ what a miserable condition are we fallen  
 “ if this expression be true!—To what are  
 “ reduced so many services, rendered from  
 “ time immemorial!—so many honours and  
 “ dignities transmitted hereditarily!—thus  
 “ to form, with the vulgar, the closest so-  
 “ ciety among men.” Such notions, too  
 generally entertained, and too publicly  
 avowed by the French nobility till the  
 latest æra of their political existence, must  
 at all times be offensive: after a general  
 diffusion of knowledge and opulence, they  
 must be insupportable. This was their  
 effect in France: they contributed very

much to produce that irritation of the public mind, which was one of the causes of the late revolution.

Among the privileges which the nobility were permitted to retain, after the loss of their territorial independence, was their exemption from the Taille,<sup>1</sup> and from some other burdens of the state. This greatly lessened the resources of government, and increased its financial embarrassments:—it was the proximate cause of that event, from which the revolution is usually dated.

<sup>1</sup> SEE NOTE XIII.

## II.

BUT, whatever may have been the abuses of the ancient regime, there is great reason to doubt, *whether the situation of the world, or of France in particular, was such, as provoked a Revolution.*—Mr. Gibbon, (i. v. c. 3,) has asserted that, “if a man were to  
“be called to fix the period in the history  
“of the world, during which the condition

“ of the human race was most happy and  
 “ prosperous, he would, without hesitation,  
 “ name that, which elapsed from the death  
 “ Domitian to the accession of Commo-  
 “ dius.” But this would be doing injustice  
 to our own times. In the annals of the  
 world, the Governments of Europe were  
 never so mild ; the nobility never enjoyed  
 their honours in so much quiet ; the clergy  
 were never so little disturbed in their privi-  
 leges ; the professions of Agriculture and  
 Commerce were never so much protected  
 and encouraged, the poor were never treated  
 with so much kindness, as from the end of  
 the seventeenth century to the commence-  
 ment of the French Revolution : nor, till  
 that time, had useful or ornamental know-  
 ledge either reached such a height, or been  
 so generally diffused. Europe abounded  
 with Institutions for promoting public and  
 private comfort and convenience ; the check  
 of manners, and opinion on power and rank  
 were very strong ; War was generally de-



precalated; and, when it broke out, the general temper of mankind prevented or softened many of the calamities which are its usual concomitants. Thus the various states of Europe enjoyed a degree of public and private happiness, which they had never before experienced, and they were the more sensible of their happiness as they might reasonably expect its increase.

This was particularly the case with France:—particular instances of oppression might be mentioned; but, viewing the general state of the Country, it may be confidently asserted that the French nation was never so prosperous, the individuals of it never so happy, as in the fifty years which immediately preceded the French Revolution. “The severest censors of the “French Government,” says M. Mounier, “could not deny the great populousness of “the Kingdom, the flourishing state of its “commerce, the plenty of its markets, or “its public tranquillity; what stronger

“ proof can be given of its general happiness and prosperity ? ”

### III.

*The event, which immediately led to the French revolution, was the discovery, in the year 1787, that the annual produce of the French finances fell short of the annual expenditure, by fifty-four French millions, or two millions two hundred thousand pounds of our money.*

1. To raise a sum, which would equalize the income with the expenditure, it was found necessary to subject the privileged orders to contribute more equally than they had done to the national burden. To effect this, the king called, first an assembly of the Notables,—afterwards an assembly of the States General. According to their ancient constitution, the three orders, of which the states-general were composed, were to assemble in separate chambers, and each

order to vote separately. To this mode of voting, the third order objected ; and, on account of the system of taxation intended to be carried against the two privileged orders, they were supported in their objection by the court. After some discussion it was settled, that the three orders should meet in one deliberative assembly and vote by the head. The king was soon dissatisfied with their proceedings : he issued, a peremptory order for the suspension of them, and placed a guard at the door of the chamber where the three orders used to meet, to prevent their assembling there in future. The members adjourned to a tennis court, and took the celebrated oath, not to separate, till a legal constitution should be established : the court allowed them to proceed :—here the revolution began ; it ended in the abolition of royalty, and the establishment of a republic.

That such an annual deficit, should produce such a sensation, in such a kingdom

as France, is *undeniable proof* that its government was in the highest degree weak and embarrassed.

2. *The chief causes of this weakness and embarrassment* were, the expensive wars and magnificence of Lewis the fourteenth; and the *expensive wars and profuse profligacy* of Lewis the fifteenth. But many states have had their weakness and embarrassments, and have sunk or recovered without a revolution.

3. *The circumstances, which made the weakness and embarrassment of the French government immediately lead to a revolution,* were the general dissatisfaction of every class of persons in France with the place it held in the state; and the general wish for a new order of things, to which that dissatisfaction gave rise. The labouring part of the community complained, that they were the despised portion of the state, and bore all its burdens; the lower rank of the clergy felt very strongly the unequal distribution

of ecclesiastical property, and the lofty manners of the dignitaries of their order; the financiers, the merchants, and the opulent burghers, had often reason to feel that, notwithstanding their wealth, their splendor, and their relative importance, they were a degraded cast in the view of the privileged orders; the nobility of the provinces, or, as we should call them, the country gentlemen, were jealous in the extreme of the nobility of the court; and those saw with indignation, that all their rank and consequence vanished before the crown and its favourites. Even the monarch himself was not wholly satisfied with his lot: partly with a view to gratify his subjects, and partly with a view to his own ease, he wished to deprive the nobility and great lords of certain prerogatives, which occasionally pressed inconveniently both on himself and his people: and he was particularly desirous of some alteration in the forms of the constitution, which would put an end to the quarrels

quarrels between the parliaments and his ministers, which equally distracted his peace, and disturbed the government.

Thus each class of men was dissatisfied with the place it held in the state, and a revolutionary spirit prevailed every where.

4. Unknown in a great measure to themselves, this revolutionary spirit had a *republican tendency*.<sup>\*</sup> On one hand, the respect of the French for the monarch had been greatly diminished by the low profligacy of the court in the latter part of the long reign of Lewis the fifteenth, and had been still further diminished by Maria-Antoinetta's rejection of etiquette, and the consequential freedom of manners: on the other hand, the contests of Lewis the fifteenth with his parliaments, the increased intercourse between France and England, and the monarch's improvident connexion with America, introduced notions of liberty, in-

<sup>\*</sup> SEE NOTE XIV.

compatible with the existing form of the French government.

To these, may be added a host of writers, almost incessantly employed in exposing to ridicule and detestation the national religion, and the abuses of government, and in pointing out the advantages and necessity of a radical reform. To those, many have attributed the destruction of monarchy, the murder of the monarch, and the general horrors of the French revolution. The charge has been principally levelled against the class of men called the French Philosophers: from this charge they have been defended, not very successfully, by M. Mounier and M. Mallet du Pan.\*

\* SEE NOTE XV.

#### IV.

At the commencement of the revolution, there was a considerable *difference of opinion among the politicians of the other states of*

*Europe, on the line of conduct which it was their interest to adopt in respect to France,* one party advising peace, the other war.

1. *The advocates for peace* asserted, that every nation has a right to regulate its internal concerns and change its form of government ; and that her making those changes can never be a just cause of war. They contended that the intentions of France were pacific : and that, if she were left to herself, the occupations of commerce and husbandry, and the pursuits of the arts and sciences would continue as before ; the political effervescence would subside, the sober and well-intentioned party would gain the ascendant ; and the king, with some salutary modifications, would preserve his power. They predicted that the war must ultimately prove ruinous to the powers who should engage in it : for, though it should destroy the commerce and finances of France, yet this would only have the effect of recruiting her armies, by supplying her,



from her unemployed workmen and artificers, with an inexhaustible body of recruits, that making her a bankrupt would only relieve her from her debts; that her twenty-five millions of population would be reduced to two professions, war and agriculture: that France would thus become a nation of armed men, with all the energy, and all the resources which, in a time of anarchy and revolution, a foreign and a popular war gives to a triumphant party, by putting them in full possession of the sovereignty, the power, the armies, the offices, and the treasures of the kingdom. Finally, they remarked how seldom coalitions have succeeded; and that, from the known aversion, which the Austrians and Prussians, the leading powers in the projected coalition, had for each other, and the envy, not to say the hatred, which all the powers proposed to be coalesced bore to the English, there were more than sufficient seeds of discord in the original constitution

of the coalition to produce its ruin. This was the language of Prince Kaunitz at Vienna, and of Mr. Fox in England.

2. The *advocates for war* contended, that, if the revolutionary spirit and practices of France were not subdued, they would overrun Europe; so that, to prevent their perishing in the shipwreck of France, it was necessary that the other states of Europe should unite and, by restoring monarchical principles, destroy their common foe. They predicted, from the state of the finances of France, that there must soon be an end of her credit, and that, whenever her credit should be at an end, she must fall at the feet of her enemies. They maintained that unconditional submission, and a full restoration of monarchy, and the ancient order of things, were the only terms which the allied powers should receive: but that the allied powers, in return for their services, should have what they were so justly entitled to, indemnity for the past, and security for the

future. They added that, in France, the friends of the revolution bore no proportion to the royalists ; and that, as soon as the allied powers should appear in force on the confines of the kingdom, the royalists would crowd to their camps, the towns would open their gates to receive them, and the flag of royalty would be unfurled in every province of the interior.—This was the language of Mr. Pitt.

3. Among the advocates for war a small portion of enlightened men, at the head of which were *Mr. Burke* and *Mr. Mallet du Pan*, held a different language. In a work, which for an united display of eloquence, information, discernment, and philosophy, has very few rivals, *Mr. Burke* exposed his sentiments. He predicted, in it the fall of royalty, the complete triumph of the *Jacobins*, the extinction of public credit, and, its consequence, the portentous power of the usurpers of the French government ; their attempts to revolutionize every state

urope, their successes, and their enor-  
s : he adjured the powers of Europe  
ite against them, to make such exer-  
as befitted no common war, to pursue  
her object than the restoration of the  
rch and the old government of France,  
to disclaim, in the most unequivocal  
essions, and by the most unequivocal  
any views of private interest.

arly in the year 1792 the League was  
ed, and the emperor and king of  
ia, at the head of an immense army,  
led France. Some time after, they  
joined by England ; and Mr. Herbert  
sh's excellent *History of the Politics of  
t Britain and France, from the time of  
onference of Pilnitz till the declaration  
w against Great Britain*, was composed  
how that England did not join the  
ie till after the open and avowed hos-  
s of France had made it unavoidable.  
is grand coalition produced no effect :  
ates, of whom it was composed, en-

tered into it, one after another, with cordiality, and with a coolness approaching to indifference. The friends of royalty among the French were persuaded, that a league was formed with some views, distinct from the re-establishment of the monarchy; the powers themselves never made any explicit declaration to the contrary; the indemnity, which they claimed for the past, was construed by the French to mean a dismemberment of a part of the empire; the security, which they claimed for the future, was construed by the French to mean a further dismemberment of a further part of the empire; and some ground for this construction appeared in the indifference shown by the allied powers to the princes of the house of Bourbon, from their unwillingness to employ them, or to repose the least confidence in them; and from their making their requests in their own names and garrisoning them with their own troops. Good politics perhaps, required that the French prin-

should have appeared as the principals in the war, the allied powers as their auxiliaries;— the reverse of which was uniformly shown;— that the French princes and allied powers should have made the terms of communion with them as broad as possible; that the French nation should have been given to understand, that much of the property which the revolution had transferred from one hand to another, should be permitted to remain with the new possessors; that, with a very small exception, a general amnesty should have been proclaimed; and that by abolishing the *lettres de cachet*, establishing regular meetings of the states-general, and making their consent necessary to new taxes; by allowing the subjects something in the nature of our Habeas Corpus; by subjecting the nobility to the burdens of the state in common with other subjects, and by extinguishing the most odious of the prerogatives of the privileged orders, some sacrifices should be made to the general

wish, expressed by almost all ranks of men at the beginning of the revolution, for the limitation of the arbitrary power of the crown, and the privileges of the nobility. It is probable that, by proceeding in this manner, a general insurrection in the interior might have been produced, which, with the co-operation of the allied armies, might have overturned the Jacobin government of France. This was the burden of many a page of M. Mallet du Pan. His melancholy forebodings, and their regular accomplishment, merited for him the honourable appellation of the Cassandra of the French revolution.

4. *The event of the war is known.* After issuing a manifesto, which should never have been issued but from the camp of victory, when the enemy was prostrate and suppliant, the duke of Brunswick made an ignominious retreat from France.

*Ex illo fluere, ac retro sublapsa referri,  
Spes Danorum. VIRG.*

“ From that time,” says Mallet du Pan,  
 “ the French republicans turned against  
 “ their enemies the terrors with which their  
 “ enemies thought they should have smit-  
 “ ten them.—In six weeks the dominion of  
 “ the revolution was rapidly extended, from  
 “ the Alps to the Rhine, and from the  
 “ territory of Genoa to the mouth of the  
 “ Scheldt. The higher circles of the  
 “ German empire, the United Provinces,  
 “ Switzerland, Italy, all floated to the  
 “ abyss.”

From this it is evident, what produced  
 the rapid and extensive conquests of the  
 French. It was that which gave Thrace,  
 Greece, and the Persic empire to Alexan-  
 der the Great;—which gave all within the  
 Ocean, the Rhine, the Danube, the Eu-  
 phrates, Mount Atlas, and the Nile, to the  
 Romans;—which gave Asia-Minor and the  
 Morea to the Turks,—the want of One  
 powerful, united, energetic and wise con-  
 federacy to subdue the common foe.—



Tacitus, in a single line, has written the history of the coalitions against France,—

*“Dum singuli pugnant, universi vincuntur.”*

Some time in the month of August 1793, the writer of these pages called on Mr. Burke; and found him, as he usually was, at that time, surrounded by many of the French nobility, and haranguing them, with great warmth and eloquence, on the horrors of the French revolution, and the general ruin with which it threatened every state in Europe. One of them interrupted him by saying, with something more of levity than suited either the seriousness of the subject, or the earnestness with which Mr. Burke was expressing himself,—“*Mais enfin, Monsieur, quand est ce nous retournerons dans la France ?*” “*Jamais!*” was Mr. Burke’s answer. It was a word of woe: he pronounced it in a very impressive manner, and it evidently appalled the whole audience. After a short silence, during which his mind

appeared to labour with something, almost too big for utterance,—he continued,—

“Messieurs! les fausses esperance ne sont  
 “pas une monnoye que j’ai dans mon tiroir :  
 “dans la France vous ne retournerez jamais.”

—“Quoi donc,” exclaimed one of the audience, “çes coquins!”—“Coquins!” said

“Mr. Burke;—“Coquins! ils sont Coquins;

“mais ils sont les coquins les plus formi-

“dables, les plus terribles que le monde a

“connu.”—“It is most strange!” He then

said in the English language,—“I fear, I am

“the only man in France or England, who

“is aware of the extent of the danger with

“which we are threatened.”—A pause en-

sued:—“But,” said a person present, who

wished to prolong this very interesting con-

versation, “the Duke of Brunswick is to set

“all right.” “The Duke of Brunswick!”

Mr. Burke exclaimed, “the Duke of Bruns-

“wick to do any good! a war of Posts to

“subdue France!”—Another pause ensued.

“Çe qui me desespère la plus,” he then

said, addressing himself again to his French hearers, “*ce qui me desespère le plus, est que, quand je plane dans l’hémisphère politique, je ne vois guerre de tête ministérielle à la hauteur des circonstances.*”

## V.

“*Je n’ai pas le courage de parler des misères qui suivirent,*” are Montesquieu’s words, when he comes to the last years of the empire of the East: they may be used by every writer, whose subject leads him to that notice, without obliging him to dwell upon *the last years of the Empire of the West.*

For the purpose of these sheets it is quite sufficient to mention, that the original confederacy against France was terminated, in respect to Austria, by the Treaty of Campo Formio, in October 1797; and that a second confederacy against France was terminated in respect to Austria, by the Treaty of Lunéville in February 1801; that, during

peace, or rather armistice, which followed, Buonaparte, in May 1804, assumed the title of Emperor of the French, and was crowned at Paris in the following November ; that, in August of the same year, the Emperor of Germany assumed the title of Emperor of Austria, for his independent kingdoms ; and was soon after crowned at Vienna ; that, in March 1805, the Kingdom of Italy was deferred to Buonaparte ; that he was crowned, at Milan, King of Italy, in the following May ; that, in the close of that year, there was a third confederacy against France, to which Austria, Russia, Prussia, and England were parties ; and that Buonaparte obtained a complete victory over it, at Austerlitz, almost immediately followed by the treaty of Presburgh, signed in the ensuing December. The first of the three confederacies we have mentioned, gave to France, Italy, and a part of Germany ; the second, laid Austria at her feet ; the third, annihilated Prussia.

In July 1806, most of the princes in the western and southern divisions of Germany separated themselves from the Germanic body, and formed themselves into a league, under the protection of the Emperor of the French, with the title of the Confederated States of the Rhine. On the 7th of the following August, the Emperor of Germany, by a solemn edict, abdicated the Imperial Government of the Germanic Empire, and absolved the Electors, Princes and States, and all that belonged to the Empire, from the duties, by which they were united to him, as its legal chief.

Such has been the extinction of the Germanic Empire, after having subsisted during a thousand years; and having been uninterruptedly possessed by the House of Hapsburgh since the election of the Emperor Albert the second, in 1438.'

' SEE NOTE XVI.

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APPENDIX

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P R O O F S  
AND  
I L L U S T R A T I O N S.

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## PROOFS AND ILLUSTRATIONS.

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### NOTE I. p. 25.

Few subjects formerly occasioned more discussion, than the **LAWFULNESS OF THE DE-THRONEMENT OF CHILDERIC BY PEPIN, AND THE LAWFULNESS OF THE ELEVATION OF CHARLEMAGNE TO THE EMPIRE OF THE WEST, IN EXCLUSION OF THE GREEK EMPERORS;** and this discussion has been revived by the recent occurrences in France. It presents two distinct subjects for consideration; the conduct of Pepin and Charlemagne, and the conduct of the popes.

I. A more unjust usurpation than that of *Pepin* can scarcely be imagined. Perhaps, in our notion of the word, the Francic throne was not, at that time, hereditary; but it was hereditary, in the sense then given to that word; so that, when a prince of the reigning family had been seated on the throne, and recognized by the people, his title, according to the universal opinion of those times, was as sacred



and incontestable as the title of any sovereign has since been considered in modern Europe. The Merovingian princes had done no act by which they deserved to forfeit the affections of their subjects; still less had they been guilty of those enormities, " which make nature rise " up, and, claiming her original rights, overturn a corrupt system." (Boswell's Life of Johnson, 2d edit. vol. ii. p. 389). The only charge alledged against them was, the degree of inactivity, which gave them the appellation of *The Sluggard Kings*; but, by confining them within the walls of their palaces, and reducing them to a life of idleness, the Mayors themselves were the real authors of their inactivity; and thus made the crime of which they availed themselves. This is demonstrated by Vertot, *Memoires de l'Academie des Inscriptions et Belles Lettres*, tom. vi. Pepin's usurpation was therefore an act of glaring injustice.

But no objection lies to the justice of *Charlemagne's* assumption of the Western Empire. The Greek Emperors had more than abandoned the people of Rome. So far they exercised sovereignty over them, as to claim a right of persecuting them for holding religious tenets different from their own; but, when they were invaded by the Lombards, and applied to the emperors for relief, it appeared that the em-

perors had little will, and no power, to relieve them. Now the rights of protection and allegiance are reciprocal ; and none can claim the latter, who has not both the ability and the will to afford the former. Protection, the emperors could not give to the Romans ; their right to the allegiance of the Romans was, therefore, at an end. On this ground, the part taken by the Romans, first in seeking the assistance of the Francic princes, and afterwards in electing Charlemagne for their monarch, deserves praise ; and it is highly in favour of the leaders in this revolution, that, till it became necessary to choose between submission to a foreign yoke, and transferring their allegiance to a new potentate, they rather retarded than accelerated the final crisis.

II. In respect to the conduct of *the popes* towards Pepin and Charlemagne,—the various texts of ancient writers which throw any light on it, are collected by Launoy, (*Opera, tom. v. pars 2. l. 12. epist. 9. p. 477-487*) and may be seen in the originals, in Dom Bouquet's *Collection, tom. v.*<sup>a</sup> To suppose that the popes,

<sup>a</sup> The title of the first volume of this work, is *Rerum Gallicarum & Francicarum Scriptores, ou Recueil des Historiens des Gaules et de la France (les plus anciens et les contemporains donnés dans leur langue originale), contenant tout ce qui s'est passé dans les Gaules avant l'arrivée des François, et*

in the time of Pepin and Charlemagne, assumed a divine right to distribute kingdoms and principalities, is to ascribe to them the Hildebrandine principles, which the Roman se

*plusieurs autres choses qui regardent les François depuis le commencement jusqu'à Clovis; le tout accompagné de Préface, Sommaires, de Notes et de Tables, par le R. P. Dom Mari Bouquet, et autres Religieux Bénédictins, Paris, 1738.* It was continued on the same plan to the year 1060: the first volume was published in 1738, the eleventh and last in 1766. The general value of the work is enhanced by the learned Dissertations, the ample Table of Contents, and the full Index, inserted in each volume, and by the Maps and other explanatory or illustrative matter occasionally introduced into the work. The Tables of Contents and the Indexes are framed with so much minuteness and skill, as to bring, in a few minutes, before the reader's eye, all that can be found in contemporary or ancient writers, respecting any fact within the period of the collection on which he can seek for information:—at the same time, that the dissertations are copious and so ably executed, that there seldom is a point of importance or difficulty, where the writers have not collected for the reader, the learning and sentiments of all preceding writers upon it. Dom Bouquet lived to finish the eight first volumes; on his decease, the work was put into the hands of Dom Haudequier; who with a view to it, had, during Dom Bouquet's life-time, learned the Arabic language, and enable him to print, with a translation, the authors who had written, in that language, upon the Crusades.—Both writers were Benedictine Monks of the Congregation of St. Maur, and invaluable as the work is, it is by no means the only work of the same calibre, for which we are indebted to the learned community.—In surveying the collection, it is not possible not to feel a wish for a similar collection of the ancient English historians.

did not profess till three centuries afterwards. But, even in the times of Pepin and Charlemagne, the popes took on them to pronounce, that there were cases, in which it was lawful for subjects to dethrone their sovereign and choose another; and also took on themselves to decide, when these cases happened; and to ascribe the justice of the measure, in some degree, to the authority of their decision.

It is curious to see how Father Daniel justifies St. Boniface, one of the principal actors in this memorable scene (*Histoire de France*, edit. 1755, vol. ii. p. 277). "All great affairs," he observes, "have a double face; and, at all times, even in the schisms of the church, holy persons have been seen to embrace different sides of a question, according to their different manner of viewing things. The danger in which Rome stood of being crushed by the Lombards, the attempts of the emperors of Constantinople against the catholic religion, the conquests made by the Saracens in Spain and the southern provinces of France, where their progress had been arrested by Charles Martel, the exposed situation of the German churches to the incursions of their idolatrous neighbours, the power and reputation of Pepin, who alone could keep off or prevent so many evils with

“ which the church was threatened, the alarm-  
 “ ing consequences of incurring his displea-  
 “ sure, the good consequences likely to be  
 “ produced by a friendly understanding be-  
 “ tween him and the holy see, the little which  
 “ in fact was taken from the king, (a king in  
 “ name only), or from a family, who, for a  
 “ century, had nothing of royalty but the  
 “ name,—all this being represented to the holy  
 “ prelate in the strong and persuasive style  
 “ which Pepin was so much master of, when  
 “ he pleased to use it, had its effect on St.  
 “ Boniface, and brought him over to Pepin’s  
 “ party. For these reasons, he thought he saw,  
 “ in what was transacting, the good of the  
 “ church and the greater glory of God.”

This is an exquisite morsel of casuistry ; it certainly is impossible to frame, on the grounds chosen by Father Daniel, a more artful apology for the pope and his adherents ; but it is only saying in other words, that the end sanctified the means ; a principle of the most dangerous tendency, and never more dangerous than when, as on an occasion like that under consideration, it is used to justify injustice done for the supposed good of religion. If the question proposed by Pepin’s desire to Pope Zachary, had been proposed to St. Paul, for his decision upon it, on the grounds chosen

by Father Daniel, his answer would have been, “ non sunt facienda mala, ut bona eveniant.”

But, it is by no means clear, that the popes acted on the principles suggested by Father Daniel. On the contrary, they appear to have decided the case by the genuine whigish principle of the correlative rights and duties of protection and allegiance. They found that Pepin was in possession of all the powers of government;—on the legality of his acquiring or continuing to hold them, their opinion was not required: the only fact stated to them was, that the sovereign power of the state was in the hands of Pepin; with an intimation of the inability of the Merovingian princes to recover it. Upon this statement, their opinion was asked, whether, as Pepin had the power, it was lawful to give him the name, and to acquiesce in his exercising the functions of king. To this they answered in the affirmative; and their answer, *in this view of the case*, does them honour<sup>b</sup>.

<sup>b</sup> About the beginning of the 17th century, a dispute between the pope and the emperor Joseph the first, produced a minute and warm discussion of the nature and extent of the donations of Pepin and Charlemagne. On the decease of Alphonsus II, duke of Modena and Ferrara, in 1597, without a child or brother, three claims were made to the

The account given in these sheets, of the transactions between Pepin and Charlemagne and the popes, is conformable to that of the Abbé St. Marc, in his *Abregé Chronologique de l'Histoire Générale de l'Italie*, 6 vol. 8vo. Paris, 1761—1770, a work of the greatest merit.

dutchy of Ferrara, a part of the possessions which devolved to him from the house of Este;—one by Cesar, the collateral heir and devisee of Alphonse, another by the pope, and a third by the emperor. Both the pope and the emperor claimed Ferrara, as an escheat, for want of a male heir of the house of Este; and the question between them was, whether Ferrara was a part of the Imperial Domains in Italy, or included in the donations from Pepin and Charlemagne. The emperor took no step to enforce his claim; but the pope, at the head of an army of 16,000 men, seized the whole territory. It remained with him and his successors till the year 1708, when the emperor Joseph the first seized Ferrara and its dependences. Among them, were the town and salt-works of Commachio on the Adriatic. In the following year, the differences between the pope and the emperor were adjusted, and Commachio restored to the pope: but, with an express saving of the rights of the duke of Modena, which were to be examined and settled by a congregation, to be instituted for that very purpose by the pope. This gave rise to the discussion in question; it was conducted by Fontanini, on the part of the pope; and by Muratori, on the part of the duke of Modena. Every part of history, in any degree connected with the subject, was discussed by the combatants with the greatest learning, and a due share of their exertions was bestowed on the nature and extent of the donations of the Carlovingian monarchs to the popes. (See the Abbé Mably's *Droit Public de l'Europe*, and Brennan's *Life of Muratori*.)

After a very attentive perusal of some of the principal works on the subject, his relation appeared to the writer, to give a consistent and probable account of the events in question, to be warranted by the best ancient authorities, and to contain such a series or chain of facts as might be expected from the spirit of the times, and the temper of the actors.

#### NOTE II. p. 32.

ON the justice of the usurpation of Pepin and Charlemagne some observations have been made. The USURPATION OF HUGH CAPET was less objectionable than Pepin's, as the weakness of the Carlovingian monarchs, of which Hugh Capet availed himself to dispossess them of their throne, was by no means so much his own work, as the indolence of the Merovingian monarchs was the work of Pepin. But, as the Carlovingian monarchs had not deserted their subjects, and no foreign enemy actually pressed on them, Hugh Capet could not urge all, that Charlemagne might have urged, in his defence.

From Hugh Capet the sceptre of France has been regularly transmitted to our time, in a course of hereditary descent from male to male: we have lived to behold its lamentable end. After a long scene of anarchy, Buonaparte has



possessed himself of the vacant throne, and given the French monarchy the more splendid title of an Empire; and Pius the seventh has repeated, in his regard, at Paris, something like the splendid ceremonies which Zachary and Leo performed for Pepin and Charlemagne, at Soissons and Rome.

The crimes and horrors of the preceding stages of the French revolution, or the deposition of Lewis the sixteenth, it is impossible even to palliate: in defence of Buonaparte's assumption of the sovereign power of France much may be alleged.

The throne of France was vacant; the exiled princes had no visible means of regaining it; and it was manifest that nothing, but the strong arm of absolute power, could restore order and good government to the country. As soon as he possessed himself of the sovereignty all the kings and powers of Europe acknowledged Buonaparte in the capacity he assumed,—a strong proof that the exigencies of the times made the measure necessary.

From this moment, in respect, both to his French subjects and to foreign Princes, Buonaparte was the lawful sovereign of France, under whatever title he might please to assume.

After such a convulsion, if it were not necessary, it certainly was justifiable, for the pope

to concur in any measure that tended to quiet the consciences of the timorous, or establish general tranquillity. This appears to be the light, in which the part he acted at Buonaparte's coronation should be viewed: and, viewing it in this light, whatever blame seems imputable to pope Zachary, none seems to attach to pope Pius the seventh.

The ecclesiastical division of France by the pope and Buonaparte has not been acquiesced in by some of the Gallican prelates: they appear much perplexed between allegiance to the Bourbons, and duty to the pope.—In defence of their conduct, they invoke the canons of the church, which, in the strongest and most explicit terms, declare it unlawful to impose a new bishop on the see of any bishop who is alive and has not resigned, or been canonically deposed from his see.—Their appeal to the canons must be decided in their favour, if the case should be tried by the ordinary rules of the ecclesiastical polity of the Roman Catholic Church. But, at the time we speak of, no sentence founded on those rules could be carried into execution. Such was the extraordinary state of things, that nothing short of the *Dominium Altum*, or the right of providing for extraordinary cases by extraordinary acts of authority, could be exerted with effect: and

that *Dominium Altum*, in the spiritual concerns of the church, the venerable prelates cannot, consistently with their own principles, deny to the successor of St. Peter.

NOTE III, referred to in Table II, following page 32.

THAT Hugh Capet was the great-grandson of Robert the Strong, is a probable opinion ; but the Carolingian descent of Robert the Strong, is, at least, problematical. The French writers differ among themselves in the manner of deducing it : and the German writers contend, that he was of German extraction. In general, the writers on the subject adopt one or other of the four following schemes ; and, so little of certainty is there in them, that, in no two of them is the same father assigned to Robert the Strong.\*

At all events, three facts are certain,—that Hugh Capet was an usurper ; that he is the Patriarch of the CAPETIAN DYNASTY, and that, through him, in a regular course of male succession, the Crown of France was transmitted to Lewis the sixteenth, its last possessor. But it has twice happened that, from the want of male issue, the lineal line has stopped, and it has become necessary to have recourse to the next col-

\* See Table XI.

*To face p. (14) in sig. P.*

In 1298, the council was made hereditary. A conspiracy in 1310, to restore the ancient form of government, gave rise to an appointment of twelve commissioners to discover its secret accomplices. That appointment, under the appellation of *the Council of Ten*, was soon after made permanent. In this form, till the late revolution, the government of Venice continued. It was a pure aristocracy:—the councils were omnipotent: the doge was almost a pageant, the people quite a cipher.

About the beginning of the eleventh century, Venice became generally known in Europe, by its extensive and lucrative trade with the sovereigns and states of Italy, Germany, Greece, and Egypt. From a merchant, she became, like our own East India company, a conqueror: by degrees she turned her factories into fortresses, and by conquest or treaty made herself mistress of many towns and ports in Dalmatia, Albania, Greece, and the Morea; and of the islands of Candia, Corfu and Cephalonia, in the Archipelago.

With equal success, but perhaps without equal wisdom, she then extended her conquests over a considerable part of the adjoining continent of Italy. They often proved to her a source of dispute and war, and drained her of the wealth which she received from the sea.

## NOTE IV. p. 81.

THE *Ἐνῆται* of the Greeks, the Veneti of the Romans, occupied a territory which stretched from the Addua on the west, to the confines of Pannonia on the east; and, from north to south, filled the space between the Rhætian and Julian Alps, and the Po. MODERN VENICE owes its origin to the invasion of Attila in 457, which drove several families of Aquileia, Padua and the adjacent country, into a cluster of numerous islands, which lie in the extremity of the Hadriatic Gulph, and are separated by shallow waters from the continent. Insensibly, something of a federal union was established among them; and, in the twelve principal islands, twelve judges were annually elected. These, in 697, were superseded by a chief, called a Duke or Doge, who was chosen for life, and enjoyed sovereign power: he was elected by a general assembly of the people. At first, all the public concerns of the republic were subject to the controul of that assembly. In 1172, a great council was established, which insensibly drew to it the whole administration of affairs. It was chosen out of the body of the people, by twelve persons, elected for that purpose at a general meeting.

the Genoese a total overthrow. They acquired by it, the complete command of the Hadriatic, the Archipelago, and almost the whole of the Mediterranean. From that time Genoa dates her decline. The politics of the Genoese have always fluctuated:—with some intervals of rational liberty, under the forms of her old constitution, Genoa, in general, has been either in a state of anarchy, or subject to the dukes of Milan, the kings of France, or the marquises of Montferrat. Her misfortunes have been equally owing to the turbulent disposition of the people, and the contentions of the great families, the Dorias, Spinolas, Grimaldi, Fiesqui, Adorni and Fregosi,

#### NOTE VI. p. 81.

FLORENCE was included in the celebrated donation of the countess Mecthildis to the popes. It has been mentioned, that the validity of this donation was contested by the emperors, on the ground, that, as the countess died without issue, her possessions reverted to the emperor, by escheat. Florence submitted to the emperors, and remained constant to them, till the beginning of the thirteenth century, when, in consequence of the tyranny of Frederic II, she threw off their yoke. For a century from that event, she was

prosperous and happy under twelve magistrates, chosen out of the general body of the people, and called Ancients. Dissentions then arose among the citizens, which ended in the usurpation of the Medici: from that time the history of Florence is familiar to every reader. The Florentines conquered many cities of Tuscany, and finally annexed Pisa, already weakened by the Genoese, to their territory. They traded extensively, in the East, and carried on a considerable inland commerce.

NOTE VII. p. 81.

SOME OF THE ITALIAN PRINCES PRESERVED THEIR TERRITORIES FROM THE EFFECTS OF THE GENERAL REVOLT OF THE ITALIAN CITIES;—among them the counts of Savoy held a distinguished rank.

SAVOY was the country of the Allobroges, Piedmont the country of the Salassi, Libyci, and Taurini: they were all vanquished by the Romans, and made a province of the empire, under the appellation of the Cottian Alps. The kings of Savoy derive their origin from Humbert with the White-hands, a son of Beroald, a Saxon prince, better known in romance than history, and said by some to descend from Wittikind. He was called Count of Savoy, Maurienne and the

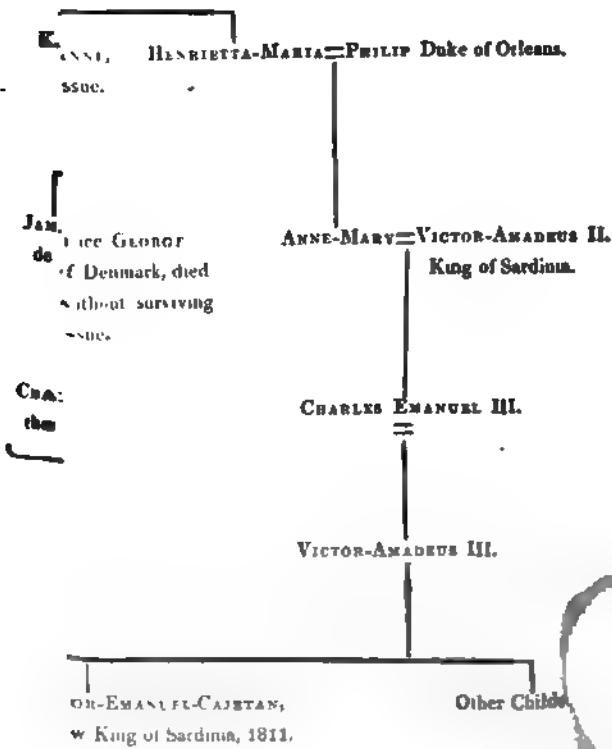


**Alps.** By his marriage with Adelaide, daughter and heiress of Manfredi, Marquis of Salaparuta, Italy, and Count of Susa, Odo the grandson of Hubert acquired the marquisates of Susa, duchy of Turin, Piedmont and the valley of Aosta. From him thirteen princes, with ducal title, proceeded. Victor-Amadeus, thirteenth in succession to him, was crowned king of Sicily in 1713, and king of Sardinia in 1720. The marriage of Amadeus the third, duke of Savoy, with Charlotte, the only daughter and heiress of John, the third king of Cyprus, brought into the house of Savoy the titular kingdoms of Jerusalem and Cyprus. The families of Lamour, Carignan and Soissons, branched from this house. The first ended in the fifth generation ; the second still subsists ;—the late unfortunate princess de Lamballe belonged to it ; the third ended in prince Eugene, the friend and ally of Marlborough.

It is observable that, if the princes of Savoy had not been excluded by the Act of Settlement from the throne of England, they would have been next in succession to it on the demise of the late cardinal York ; as they are lineally descended from Henrietta Maria, the wife of the duke of Orleans, and she was the only child of Charles the first, of whom on the death of the cardinal, there was issue living.

To face p. (24) in sig. Q.

**DOM OF GREAT BRITAIN AND IRELAND.**



## NOTE VIII. p. 82.

**AFTER** the princes of Savoy, the **DUKES OF MILAN** should be mentioned. They profess to descend from Desiderius, the last king of the Lombards. Boniface, count of Milan and Angleria, was in the eighth line of descent from Desiderius : he had two sons, Azo and Eliprand ; the latter obtained the Marquisate of Milan, and is the patriarch of the dukes of Milan. The name of Visconti, (like our Viscount), at first denoted an office and dignity immediately subordinate to the count, but afterwards became the surname of the family.

In a contest between the nobles and the people of Milan, Atho Visconti their archbishop, was compelled to take part with the former. He gave the command of the military force, and afterwards resigned the whole civil power, to his great nephew, Matthew, surnamed the Great. John, a descendant from Matthew, was created duke of Milan in 1396, by the emperor Wincelaudus. His second son Philip-Mary, the third duke of Milan, had no lawful issue, but, by a mistress, had a daughter, Bianca-Mary Visconti, whom he legitimated, and declared heiress of the dukedom of Milan. She married Francis Sforza, the son of Mutius Attendulus, a soldier of fortune,

and carried the duchy of Milan into his family. It comprised considerable territories on each side of the Po ; but in latter times they have not been nearly so considerable as they were in the first erection of the duchy.

NOTE IX. p. 82.

THE republics and principalities which have been mentioned, lie in the northern part of Italy ; its southern part belongs to THE KINGDOM OF NAPLES.

1. The extremity of Italy was planted by colonies of Greeks : from this circumstance, it acquired the appellation of *Magna Græcia*.—It submitted to the arms of the Romans, and, sharing in the misfortunes of the empire, was successively ravaged by the Visigoths and Vandals. After Italy was reconquered by the arms of Belisarius, Naples was governed by the exarch of Ravenna. In 589, Autharis, king of *the Lombards*, conquered the duchy of Beneventum.

When, in 774, the kingdom of the Lombards was extinguished by Charlemagne, the duchy of Beneventum survived its downfall ; and, during two centuries from that period, was governed by princes of Lombard blood, who were feudatories to the emperor of Germany. The duchies of Naples, Gaeta and Amalphi, and the provinces

of Puglia and Calabria continued subject to the emperor of Constantinople: the Saracens were masters of Bari, Tarentum and Sicily.

2. In 1016, an inconsiderable body of *Normans* arrived at Salernum, engaged in the service of the Lombard prince, and, about twenty years after, obtained from him a grant of the town of Aversa, (distant about nine miles from Capua) and of the adjacent territory.

In 1035, the sons of Tancred of Hauteville in Normandy arrived in Italy, and were soon placed at the head of the Norman adventurers. Their brothers and successors, William, Dreux and Humphry, extended their conquests, and became dukes of Apulia and Calabria. But Robert Guiscard, their eldest brother, was the founder of the dynasty of Norman sovereigns of Naples. Pope Nicholas II. granted him, what it is hard to prove he had any right to dispose of, the title of Duke of Apulia, with the perpetual sovereignty of that country and of Sicily, if he could conquer it. In performance of the condition, he subdued Sicily; and the earldom of it was assigned to his brother. Then, carrying his arms into Italy, he successively conquered Salernum, Amalphi, Tarentum and Beneventum. Robert was succeeded by Roger his son; Roger, by William, his son, and William by his cousin Roger, who assumed the title of king, and thus became

founder of the kingdom of Naples, or both the Sioilies.

3. In consequence of a failure of issue male of these princes, the kingdoms of Naples and Sicily passed to Frederic the second, the son of the emperor Henry VI, by the princess Constantia, the aunt and heiress of William II, the duke of Apulia. Thus it vested in the *Suabian Line of Emperors*; they lost it, in consequence of their disputes with the popes. Availing himself of the minority of Conradine, pope Innocent seized both kingdoms, excommunicated the infant, caused or connived at his being beheaded, and offered the throne to any person who should expel the possessors.

4. Charles of Anjou accepted and succeeded in the enterprize; he was invested with both kingdoms by the pope, under an obligation of homage and fealty, an annual payment of 8000 ducats, and an annual delivery of a white horse: thus he became the founder of the *Anjerrine line of Neapolitan monarchs*.—The French yoke became so galling to the Sicilians, that on Easter Tuesday, in the year 1282, the whole island rose and massacred every Frenchman but one: an event, known in history by the name of the *Sicilian Vespers*. The insurgents offered the crown to Peter the third, of Arragon; a long war ensued, in the course of which Charles of Anjou died of heart. Charles, his son, was at that







rave of Brandenburg of this family. He, in  
 1415, sold it for 400,000 crowns to Frederick,  
 the eleventh count of Hohenzollern, and mar-  
 raved of Nuremburg. For high antiquity, or  
 splendid descent and alliances, few families in  
 Europe can contend with the Hohenzollerns. If  
 they cannot prove their descent from Phara-  
 mond king of France, they can shew that Bar-  
 nold, their patriarch, was count of Zollern, and  
 considered among the most illustrious families in  
 Germany in the beginning of the eleventh cen-  
 tury. To him, Frederick count of Zollern, the  
 purchaser of the electorate of Brandenburg,  
 was eleventh in succession.

From him ten margraves descended, in a re-  
 gular succession of males through males—John-  
 sigismond, the eighth of them, married Ann, the  
 heiress of Prussia, Cleves and Juliers: she was  
 the grand-daughter of Albert, the Grand Master  
 of the Teutonic Order, who seized Prussia in  
 1525. George-William, the son of John Sigis-  
 mond, was singularly unsuccessful in all his en-  
 terprizes. Frederick-William, his son and im-  
 mediate successor, restored the fortunes of the  
 family: he was called the Great Elector. His  
 son assumed the title of king of Prussia. The  
 ceremony was performed at Koningsbergh, on  
 the 18th of January 1701, he himself placing the  
 crown on his own head. He had previously

secured the concurrence of the emperor, to whom, in the wars for the Spanish succession, he had rendered essential services : his title was acknowledged with little reluctance, by all the sovereigns of Europe. The last king of Prussia was his grandson.—The accompanying Table contains an outline of the Hohenzollern descent, so far as relates to the subject of these sheets.\*

### X. 3.

THE ELECTORS OF SAXONY profess to derive their descent from Wittikind the duke of Saxony, who (it has been already mentioned) was conquered, after a war of thirty years, by Charlemagne. The same descent is claimed by several of the most illustrious houses of Europe : the nature of their pretensions will appear in Table XVI. which shews what are called by foreign genealogists, the *Four fruitful Branches of the Wittikindian Trunk*.

The electors of Saxony are traced from Herman Billung, created duke of Saxony by the emperor Otho the first, in 960. Magnus was the fifth and last duke of Saxony of this line.

On the failure of issue of his body, the ducal honours passed to Otho the rich, a count of the house of *Ascania*, who had married Elicke the

\* SEE Table XV.

youngest daughter of Magnus. The Ascanian princes (if fables may be mentioned), derive their origin from Ashkenaz, the grandson of Japheth, and first king of the Germans. A more probable, but still a suspicious, account, traces them to Bernwald, a Saxon chieftain, on whom, in 514, Thierry bestowed the towns of Ballendstadt and Atcherstoben. From him Otho the rich derived his descent: Bernard, his grandson, was the first elector of Saxony.

The emperor Sigismond, on the decease of Bernard, conferred the electorate on Albert, his son: Albert was succeeded by his younger son, whose grandson Albert the third was the last elector of Saxony of the Ascanian line.

After him, the electorate was successively enjoyed by Frederick the warlike, and Frederick the wise, of the *Thuringian* branch of the Wittkindian stem: the last had two sons, Ernest and Albert; the former is the patriarch of the *Ernestine*, the latter is the patriarch of the *Albertine* line, of the Saxon princes. The protestant religion has the greatest obligations to the princes of the Ernestine line: Frederick, the eldest son of Ernest, was Luther's first patron and defender; John, the second son of Ernest, was the greatest promoter of the protestation against the church of Rome, from which the protestants have derived their appellation.

In 1547, Charles the fifth deprived John-derick, the son of Ernest, of his electorate, conferred it on Maurice, the grandson of Albrecht the younger brother of Ernest, and the patriarch of the Albertine line. John-George, the younger nephew of Maurice, celebrated three jubilees: the first, in 1617, in memory of Luther; the second, in 1630, in memory of the Augsburg confession: and the third, in 1655, in memory of the peace of Passau. In 1697, Frederick Augustus, then the hereditary prince, afterwards elector of Saxony, embraced the Roman Catholic religion; but neither he nor his successors attempted to constrain the consciences of subjects.

The accompanying Table shews the descent of this Electoral House of Saxony.\*

#### X. 4.

FROM Saxony, we pass into THE ELECTORATE OF HANOVER. An English reader naturally dwells on every thing, which relates to the fortunes and fates of the princes of this dynasty.

It has been said that not fewer than one thousand works have been written on the Genealogy and History of THE GUELPHS: the points particularly attended to in it, are their It

\* SEE Table XVII.

origin, German Principality, and English monarchy.

I. *The Italian Descent* of this illustrious family from Azo, who married Cunegunda, the heiress of the Guelphs of Altorp, is unquestionable: with great learning and clearness, Scheidius, in his *Origines Guelphicæ*, has attempted to prove the Guelphic extraction of Azo.<sup>†</sup>

According to him, two brothers, Ethico and Adelph, were princes of the Skyrri, a nation in Alsace, not far from the southern bank of the Rhine. The former was a general of Attila's army; and had two sons, Odoacer, who, by his conquest of Italy, put an end to the Roman empire of the west, and Guelph, who settled in the Rhine. Odoacer, with Thilanes his only son, was killed in 493. A count of Bavaria, whose name is not known, and who died in 687, was enthroned in succession to Guelph. He had issue two sons, Adalbert count of Bavaria, and Patrik of the marquises of Tuscany, and Ruthard, Alemannian count. Azo the second, was enthroned in succession to Adalbert; Cunegunda was eighth and ninth in succession to Ruthard. Azo and Cunegunda intermarried about 1050, and thus, if Scheidius's scheme be relied on, the two branches of the Guelphic stem were re-united, after a lapse of more than three centuries.

<sup>†</sup> See Table XVIII.

A son, called Guelph, was the issue of Azo and Cunegunda. After the decease of Cunegunda, Azo married Gersenda, a daughter of Hugh count of Maine, and had issue by her a son called Fulk, from whom the dukes of Modena are lineally descended. Guelph, the son of Azo, by Cunegunda, had two sons, Guelph, and Henry the black: the former married the princess Mechtildis, the heiress of the elder branch of the house of Esté, renowned for her celebrated donation, (which has been mentioned) to the see of Rome. She died without issue, but her husband retained some part of her hereditary possessions, and died without issue.

II. Henry the black was the founder of the *German Principalities* possessed by his family. He married Wolphildis, the sole heiress of Herman of Billung, the duke of Saxony, and of his possessions on the Elbe. His son Henry the proud, married Gertrude, the heiress of the dutchies of Saxony, Brunswick, and Hanover. Thus Henry the proud,

1st. As representing Azo, his great grandfather,—inherited some part of the Italian possessions of the younger branch of the Estesine family: they chiefly lay on the southern side of the fall of the Po into the Adriatic:

- 2d. As representing count Boniface, the father of the princess Mechtildis,—he inherited the Italian possessions of the elder branch of the Estesine family : they chiefly lay in Tuscany :—some part of the possessions of the princess Mechtildis also devolved to him :
- 3d. As representing Cunegunda, his grandmother,—he inherited the possessions of the Guelphs at Altorf.
- 4th. As representing his mother, the sole heiress of Herman of Billung,—he inherited the possessions of the Saxon family on the Elbe :
- 5th. And through his wife,—he transmitted the dutchies of Saxony, Brunswick, and Hanover.

All these possessions descended to Henry the lion, the son of Henry the proud. He added to them Bavaria, on the cession of Henry Jossemargott,—and Lunenburgh and Mecklenburgh by conquest. Thus he became possessed of an extensive territory,—he himself used to describe it in four German verses, which have been thus translated :

*Henry the Lion* is my name :  
Through all the earth I spread my fame,  
For, from the Elbe, unto the Rhine,  
From Hartz, unto the sea,—*All's Mine.*

In other words, his possessions filled a considerable portion of the territory between the Rhine, the Baltic, the Elbe, and the Tyber.

Unfortunately for him, in the quarrels between the pope and the emperor Barbarossa he sided with the former. The emperor confiscated his possessions; but returned him allodial estates in Brunswick, Hanover, and Lunenburgh: he died in 1195. By his first wife he had no issue male: his second wife was Matilda the daughter of Henry the second, king of England. By her, he had several sons; of whom only one died, except William, called William of Winchester, from his being born in that city. William of Winchester had issue Otho, called Otho puer, or the boy.

At the decease of Otho puer, the partition of this Illustrious House commences. An outline of it will appear in the accompanying <sup>8</sup> table which shews the Guelphic genealogy, from the marriage of Azo with Cunegunda to the present time.

The subject of these sheets leads only to the Lunenburgh branches of the Guelphic shoot the Estesine line.

On the death of Otho the boy, Brunswick and Lunenburgh, the only remains of the splendid possessions of his grandfather, William I

<sup>8</sup> See Table XIX.



proud, were divided between his two sons, John and Albert: Lunenburgh was assigned to the former, Brunswick to the latter. Thus the former became the patriarch of, what is called, *the Old House of Lunenburgh*. Otho his son, received Hanover, as a fief from William-Sigefred the bishop of Hildesheim. Otho had four sons; Otho his first son, succeeded him; and dying without issue, was succeeded by his brother William with-the-large-feet. He died in 1369, without male issue; the two other sons of Otho the father, also died without male issue.

Thus there was a general failure of issue male of John, the patriarch of the old house of Lunenburgh. By the influence of the emperor Charles the fourth, Otho elector of Saxony, who had married Elizabeth, the daughter of William, succeeded to the dutchy. He died without issue, and left it, by his will, to his uncle Wincellaus, elector of Saxony. It was contested with him by Magnus Torquatus duke of Saxony;—the contest ended in a compromise; under which Bernard, the eldest son of Torquatus Magnus, obtained it, and became the patriarch of *the Middle House of Lunenburgh*: he died in 1434. After several descents, it vested in Ernest of Zell, who introduced the Lutheran religion into his states.

After his decease, his sons Henry and Wil-

liam for some time reigned conjointly ; but William persuaded his brother to content himself with the country of Danneburgh ; while he himself reigned over all the rest, and thus became the patriarch of the *New House of Brunswick-Lunenburgh*.

He left seven sons ; they agreed to cast lots which should marry, and to reign according to their seniority. The lot fell to George, the sixth of the sons : Frederick was the survivor of them.

On his decease, the dutchy descended to Ernest Augustus, the son of George, with whom the *Electoral House of Lunenburgh* commences. His reign is remarkable for two circumstances ; — his advancement to the electoral dynasty, and his wife *Sophia's* being assigned, by an act of the British parliament, to be the royal stem of the protestant succession to the throne of Great Britain and Ireland.

III. On the demise of queen Anne, George his son, in virtue of this act of parliament, succeeded to the *British Monarchy*.

The house of Brunswick-Lunenburgh is now divided into two branches, the German and the English. The former, under the title of Brunswick-Lunenburgh and Wolfenbittel, possesses the dutchies of Brunswick and Wolfenbittel, and the countries of Blanckenburgh and Reinskin,

and reckons 160,000 subjects:—the English, under the title of Brunswick-Lunenburgh and Hanover, and with the electoral dignity, possesses the electorate of Hanover, the dutchies of Lunenburgh, Zell, Calenberg, Grubenhagen, Deepholt, Bentheim, Lawenburgh, Bremen, and Verdun; and counts 740,000 subjects.

The most remarkable events in the history of the English line of the house of Lunenburgh, are thus summarily mentioned by Mr. Noble, in his *Genealogical history of the present royal families of Europe* :

“ Ernest Augustus, duke of Brunswick-Lunenburgh, married, 1650, to Sophia, granddaughter of king James the first, and daughter of Elizabeth, Princess-Royal of Great Britain. By the treaty of Westphalia he obtained, that one of his family should be elected bishop of Osnaburgh alternately with one of the Roman catholic religion; and, accordingly, upon the death of cardinal Wirtemberg in 1668, he became bishop of that see : in 1692, he was raised to the dignity of elector, which was to descend to his family ; the office of great standard-bearer was to have been added to it by the emperor Leopold, but he was prevented doing it by the ducal house of Wirtemberg’s protesting against it ; the house of Hanover now is the only electoral family with-

“ out an hereditary office ; but they have as-  
“ sumed that of arch-treasurer of the empire  
“ He died at Herenhausen, February 3, 1698.

“ George-Lewis succeeded his father in the  
“ electorate of Hanover and dutchy of Bruns-  
“ wick-Lunenburgh ; and upon the death of his  
“ uncle and father-in-law, George William, to  
“ that of Zell, and upon that of queen Anne, to  
“ the kingdom of Great Britain : he died sud-  
“ denly at Osnaburgh, June 11th, 1727. He  
“ was one of the most fortunate princes that ha-  
“ lived in Europe, which his prudence and va-  
“ lour entitled him to : his predilection for  
“ Hanover, though natural, was much disliked  
“ by his other subjects.

“ George-Augustus II, created Prince of  
“ Wales 1714, succeeded to Great Britain and  
“ Hanover, and died suddenly, October 25  
“ 1760, in the height of glory : he was a just  
“ and merciful prince, but resembled his father  
“ in his too great attachment to his electoral  
“ dominions.

“ Frederick-Lewis, prince of Wales, came  
“ into England 1729, died March 20th, 1750  
“ universally regretted.

“ George the third, created prince of Wales  
“ 1751, succeeded October 25, 1760, crowned  
“ September 22, 1761, gave peace to Europe  
“ 1762, to the blessings of which he devoted

To face p. (41) in sig. R.

## OF AZO WITH CUNEGUNDA.

descended.

1113.—Heiress of Herman of Billung, and  
possessions of Lunenburg, &c. on the Elbe.

and —GARRUDE.—Heiress of Saxony.  
Brunswick and H.

New House of Brunswick, Lunenburg,

1. LEWIS,  
B. P.

2. GEORGE-WILLIAM,  
Duke of Zelle,  
† 1705.

3. JOHN-FREDERICK,  
Duke of Hanover,  
died without Male  
Issue, 1690.

1114.—DOROTHY,  
only child,  
Heiress of Zelle.

† 1760.

LEWIS Prince of Wales, † 1750.

(L.

and thus formed by degrees considerable principalities.

1st. At first, the palatines of the Rhine were the dukes of Bavaria of the house of Wittlesbach, a castle in the dutchy of Bavaria, near Aicha on the Paar, which runs into the Danube near Ingoldstadt. The last of this family, in whom these dignities were united, was Lewis the severe, who died in 1294. He had two sons, Lewis and Rudolph. The first obtained the duchy of Bavaria for his portion, and was afterwards elected emperor. Rudolph obtained the palatinate for his portion, he is the patriarch of the *Rudolphine or Old Electoral Line of the palatine family*; he died in 1319.

2d. Upon the decease and failure of issue of Otho-Henry, the twelfth elector of this line, the palatinate passed to Frederick of the house of Simmeren. With him the *Middle Line of the palatine family* is supposed to begin. Frederick, his great-grandson, was deposed, and the Upper palatinate, with the electoral dignity, was bestowed upon Maximilian, duke of Bavaria. After his decease, Charles-Lewis, the surviving son of Frederick, was re-established in the Lower palatinate. At the treaty of Westphalia, he was created eighth elector of the empire, under the title of Great Treasurer of the empire.

3d. Charles, his son, died without issue; on

his death the electorate descended to prince William of the Newburgh branch of the family of Deux-ponts, and thus he became the founder of *The palatine Line of the House of Newburgh, or the New Electoral Line of the Palatine family*. He had several sons; John-William-Joseph, the eldest of them, died without issue; Charles-Philip, the second of them, left no issue male, but had three daughters; the two eldest of whom died without issue; Sophia-Augusta, the youngest of them, married Joseph-Charles-Emanuel, the hereditary prince of the Sultzbach line of the house of Newburgh: they had issue one child, Mary-Elizabeth, who married Charles-Philip-Theodore, who was son and heir apparent of John-Christian-Joseph, her father's brother, and who consequently was her first cousin. In her right he succeeded to the palatinate: he succeeded also, as will be afterwards mentioned, to the electorate of Bavaria.

This will appear by an inspection of the genealogical table at the end of the next article.<sup>a</sup>

#### X. 6.

BAVARIA, was anciently inhabited by the Vindelici:—they were dispossessed of the country by the Boii.

1. All historians agree, that the house of Bavaria is one of the most ancient and illus-

<sup>a</sup> SEE Table XX.

trious of the German families. Several princes, with the title of duke of Bavaria, are mentioned before the time of the emperor Charlemagne. Thassillo, the last of them, was conquered and deposed by that emperor. Lewis the debonnaire, the son of Charlemagne, united Pannonia and Bavaria, and conferred them, as a dutchy, with the title of Bavaria, on his second son. From him the dutchy passed, through a series of princes, to Henry the lion. In his time it comprised a much greater extent of territory than the modern Bavaria, as from east to west, it extended from the mountains of Franconia to the frontiers of Hungary, and from north to south it extended from the palatinate to the Adriatic Gulph. *Ancient Bavaria* also comprehended the Tyrol, Carinthia, Carniola, Styria, Austria, and other states. What at present is called Bavaria, lies between Bohemia, Austria, Franconia, and the Tyrol.

2. When Henry the lion was proscribed by Frederick Barbarossa in 1180, the emperor gave that part of his territory, which forms the *Modern Bavaria*, to Otho, a prince of the house of Wittlesbach, and created him duke of Bavaria. From him the territory and title descended to Maximilian, who succeeded to them upon his father's resignation in 1597. In 1620, the emperor Ferdinand conferred on him the electoral





*To face*

# T A B L OF THE

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1. OTHO, . . .  
TLESBACH; advat

2. LEWIS, . . .  
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3. OTHO, . . .  
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4. LEWIS, the Se  
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NOTE XI. p. 114.

THE POSSESSIONS OF FIVE POWERFUL FAMILIES CENTERED IN CHARLES THE BOLD, the father of Mary, the wife of the emperor Maximilian.

1. Burgundy and Franche-Comté may be considered as his *Patrimonial Estates* :

2. From *Margaret, the heiress of the Counts of Flanders*, and the wife of Philip the bold, his great-grandfather, he inherited Flanders, Artois, Mechlin, Namur, and Antwerp : the latter, which included Brussels, Louvain, and Niville, was called the Marquisate of the Sacred Empire :

3. From *Johanna, the heiress of the Dukes of Brabant and Limburgh*, he acquired those duchies :

4. From *Jacobæa, the heiress of the Counts of Holland*, he acquired Holland, Friesland, Zealand, and Hainault :

5. And from *Elizabeth, the heiress of the Dukes of Luxemburgh*, he acquired that duchy.

These twelve provinces,—Flanders, Artois, Mechlin, Namur, Antwerp, Brabant, Limburgh, Holland, Friesland, Zealand, Hainault, and Luxemburgh, descended to the emperor Charles

the fifth, the grandson of Maximilian : he purchased Utrecht, Overysse, Groningen, Gueldres, and Zutphen. These seventeen provinces formed the Netherlands : Charles the fifth annexed them to the crown of Spain, and resigned them, with that monarchy, to Philip the second, his son.

In 1581, the provinces of Holland, Zealand, Utrecht, Friesland, Groningen, Overysse, and Gueldres, revolted from Philip, and proclaimed themselves free. They formed themselves into a confederacy, which, from the number of provinces composing it, is called the Seven United Provinces ; and from Holland, the chief of them, is called the Republic of Holland. In the time of Tacitus, these territories were chiefly possessed by the Batavi.

The ten remaining provinces were preserved to Spain, by the ability of the duke of Parma, the hero of Strada's history. Philip the second, gave them, in marriage with his daughter, the Infanta Isabella, to archduke Albert, the son of Maximilian the second, but on condition they should revert to Spain, if she died without issue :—that event having taken place, they reverted to the crown of Spain.

They were often the theatre of the wars between France and Spain ; and once France had nearly made an entire conquest of them : but,

first by the peace of Radstadt, and afterwards by the peace of Aix-la-Chapelle, they were assigned to Austria, with the exception of Artois, the Cambresis, part of Flanders, part of Hainault, and part of Luxemburgh. The adjacent towns and territories of Menin, Tournay, Furnes, Winouque, Loo, Dixmude, Ypres, Roussellar, Peperingen, Warneton, Comines, and Werwick, were also assigned to the emperor. Soon after the beginning of the French revolution, France made an easy conquest of them all : and, under the name of Belgium, they now form a part of the one and indivisible Empire. Speaking generally, the Austrian Netherlands, in their original extent, were filled by the Menapii of Tacitus.

## NOTE XII. p. 176.

THE following miscellaneous observations on ROMAN, GERMAN, FRENCH, AND ENGLISH NOBILITY, AND THE SIXTEEN QUARTERS OF NOBILITY, may not improperly accompany the preceding genealogical deductions.

1. The *ROMANS* were divided into *Ingenui* and *Serri*, or Freemen and Slaves : the lowest class of the *Ingenui*, were those who, themselves had always been free, but whose parents had been slaves : the class immediately above them was composed of those, whose families,

for several descents, had been free : on this account they were said to have *Gentem et Familiam* : the next and highest class consisted of the *Nobiles*. At first, the *Nobiles* consisted entirely of the Patricians, who descended from the two hundred Senators chosen by Romulus, and the hundred chosen by Tarquin : to them, in subsequent times, were added those, who were raised to the Curule magistracies, and the Senators. These were noble during their lives ; but, if both the son and the grandson of such a magistrate, or of a senator, filled any of these magistracies, or were senators, the grandson's title to nobility was perfect, and he transmitted it to his descendants. The nobles had *Jus Imaginum*, or a right to have their images placed in a conspicuous place in their houses, and borne in processions ; but the first acquirer of nobility was entitled only to his own image, and was, therefore, called *Novus Homo*.

2. The general division of the *ANCIENT GERMANS* was into *Freemen* and *Slaves*. Among the freemen, those, who commanded the armies, or took a lead in the councils of the state, were particularly distinguished : from them, the prince was usually elected. In the middle age, the same division was continued, the *Nobiles* being distinguished from the *Ingenui*, or general body of freemen. The bishops and

other ecclesiastical dignitaries ranked among the former ; the other churchmen, among the latter. From the former, the king naturally chose his guards, officers, advisers and companions ; from among their followers, the chiefs naturally selected theirs. At all times the dignity of the parent reflects on his issue ; among the Germans it gave the descendants of illustrious parents an hereditary consequence, and insensibly an hereditary rank : this produced the three-fold distinction, of lineage royal, lineage noble, and lineage purely free.

The first was composed of *Princes*, or those who claimed royal descent ; the second, of *Dukes, Counts, Marquises, Barons* and *Knights*. The *Knights* were divided into Knights Banneret, who had the right of carrying a banner, to which fifty soldiers, at least, were attached, and Knights Batchelors, who served under another's banner : —After the Knight, came the *Esquire*, who carried his shield, and he also was noble.—After the Esquire, came the mere freeman.

Such was the ancient nobility of the Germans, and of the Franks, their descendants. Afterwards it was acquired, 1st, by the grant of a noble fief, or a fief which immemorially had conferred nobility on its possessor ;—2dly, by filling any of the great offices of state, or any of the great offices in the king's household,

or any high office of magistracy ;—and, 3dly, by letters of nobility.

It should, however, be observed, that it was in early times only, that the possession of a Noble Fief conferred nobility. The Ordinance of Blois, (article 258), expressly provided, that non-nobles should not be ennobled by the acquisition of a Noble Fief.

After the extinction of the Carlovingian dynasty, Germany was partitioned by a multitude of princes, bishops, abbots, and male and female Nobles, who under the various names of Dukes, Princes, Counts, Marquises, Lords, Margraves, Burgraves, Rhingraves, and other more or less known denominations, possessed the rights appropriated to sovereigns : but all of them recognized the emperor as their Feudal Lord, and all were obliged to furnish him with a certain number of soldiers. They were principally divided into the Primitive States, or those which had uniformly been held of the emperor, as the dutchies of Saxony and Bavaria, the Palatinate, and several bishoprics :—those, which arose on the ruin of the Guelphic family, in consequence of the confiscation of the possessions of Henry the lion ; those, which arose from the ruins of the Suabian family ; and, those which, (principally during the long Interregnum), arose from other causes.

Holy Ghost, and to those, who command nobility, as Governors of Provinces, and Intendants-General. With this single exception all the nobility of France, whether Dukes, Marquises, Counts, Viscounts, or Barons, were in all respects, of the same degree.—Public opinion made a difference among them ;—it was founded on the antiquity of their rank, and illustration of their families by dignities and alliances.—Thus, in public opinion the Duke de Montmorency was, at an immeasurable space, above the Duke de Luyne; and Count de Rieux ranked much higher than Prince de Poix.

In England, it is often said, that, among French, noblemen and gentlemen were convertible terms, every nobleman being a gentleman, every gentleman being a nobleman. But this expression is inaccurate ;—every French gentleman was a nobleman, but every French nobleman was not a gentleman. A person, to whom nobility was granted, or who was appointed to a charge conferring nobility, the transmission of which was suspended till it vested in his second descendant, was noble : but neither he nor his son was a gentleman ; the grandson was the first gentleman of the family. Thus, in France, gentleman was an higher appellation than nobleman :—Francis the first, styled himself the





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Philip IV.

gentleman of his kingdom: the king's brother, was Monsieur, the first gentleman among the subjects of the French king.

In France, trade in general, and farming the lands of another, derogated from nobility. At any time, within a century after the first act of derogation, the derogated nobleman, unless he had been bankrupt or otherwise disgraced, might easily obtain letters of relief or rehabilitation. After that term, he could only be ennobled by a new title.

In Brittany, when a nobleman engaged in trade, his nobility was said to sleep; the instant he quitted trade, paid his debts, fulfilled all his mercantile engagements, and entered this on the public registers, he was restored to his nobility. Under these circumstances, a nobleman of Brittany was considered noble, not only within Brittany, but in every other part of the French dominions.

The privileges annexed to nobility in France were very considerable: the principal of them were, an exclusive right to assist at the assemblies of the nobility; to be admitted into certain orders and chapters; 2. Exemption from *bannalité* and *corvées*, personal servitudes, the *taille*, quartering of soldiers, and the duty of *franc-fief*. 3. A right to carry arms, to wear coat-armour with a crest, and to be judged, in cri-

minal matters, by the Tournelle, and the Great Chamber of Parliament.—The dukes and peers were entitled to a seat in parliament, and to be tried by their peers.

In France, nobility had become very venal; but this was not peculiar to France : in 1750, the court of Vienna published at Milan, a tariff, fixing the price at which the title of prince, duke, marquis, or count, might be purchased.

The Germans carried their notions of nobility farther than the French ;—the Spaniards farther than the Germans. “ We,” said the Justiza of Arragon, in the name of the nobility, to the king, when they swore allegiance to him, “ we, “ who are each of us as good as you, and who “ are altogether more powerful than you, promise obedience to your government, if you “ maintain our rights and liberties ; but if not, “ not.”—When the duke of Vendôme made the Spanish nobility sign a declaration of allegiance to Philip the fifth, most of them added to their names, the words, “ Noble as the King.”—The duke bore this with tolerable patience ; but could not contain himself, when one of them, after these words, added “ And a little more”—“ Heavens !” exclaimed the duke, “ You don’t call in question “ the nobility of the house of France, the most “ ancient in Europe.”—“ By no means,” replied the Spaniard, “ but, my lord duke, please to

“ consider that after all, Philip the fifth is a Frenchman, and I am a Castilian.”

4. From what has been mentioned, the difference between French and *ENGLISH NOBILITY* is obvious. While in France, a gentleman is a nobleman's highest appellation, an English nobleman, both in law and public opinion, holds a splendid pre-eminence over the English gentleman.

This is principally owing to the distinction which, about the reign of Henry the third, took place in England, between the great and small barons.

In all countries where the feudal polity has been established, a national council, under the name of States-General, Cortez, the Grand Assize, or the Parliament, has been introduced. It generally consisted of three states, the Lords Spiritual, the Lords Temporal, and the Third Estate, or the Commonalty. In almost every country, except England, the Third Estate was originally distinguished from the nobility, and consisted of the Commonalty alone. In England all the Barons, or the Lords of Manors, held immediately of the King, were entitled to a seat in the National Council. In the course of time they became numerous, and the estates of many of them became very small. This introduced a difference in their personal im-

5. The nobility of his paternal grandfather's mother, and her father ; this entitles him to a fifth quartering :
6. The nobility of his paternal grandmother's mother, and her father ; this entitles him to a sixth quartering :
7. The nobility of his maternal grandfather's mother, and her father ; this entitles him to a seventh quartering :
8. The nobility of his maternal grandmother's mother, and her father ; this entitles him to an eighth quartering :
9. The nobility of his paternal grandfather's paternal grandmother ; this entitles him to a ninth quartering :
10. The nobility of his paternal grandfather's maternal grandmother ; this entitles him to a tenth quartering :
11. The nobility of his paternal grandmother's paternal grandmother ; this entitles him to an eleventh quartering :
12. The nobility of his paternal grandmother's maternal grandmother ; this entitles him to a twelfth quartering :
13. The nobility of his maternal grandfather's paternal grandmother ; this entitles him to a thirteenth quartering :
14. The nobility of his maternal grandfather's

maternal grandmother ; this entitles him to a fourteenth quartering :

15. The nobility of his maternal grandmother's paternal grandmother ; this entitles him to a fifteenth quartering :

16. The nobility of his maternal grandmother's maternal grandmother ; this entitles him to a sixteenth quartering :

To be a Knight of Malta, four quarterings were required from a French, and eight from a German, or Spanish, postulant : for a canonicate of the cathedral church of Strasburgh sixteen were required. It being frequently found convenient to repair a shattered patrimony, by a mercantile or financial marriage, few French families about the court could produce that number. When all the quarterings were perfect, it was said, that the House was Full. A defective quartering was called a Window. In account of the non-noble descent of Mary Medicis, the wife of Henry IV, the Escutcheon of Lewis XIV, their grandson, had its window. But the provinces abounded with families from whom Knights of Malta, and even canons of Strasburgh might be chosen.<sup>a</sup>

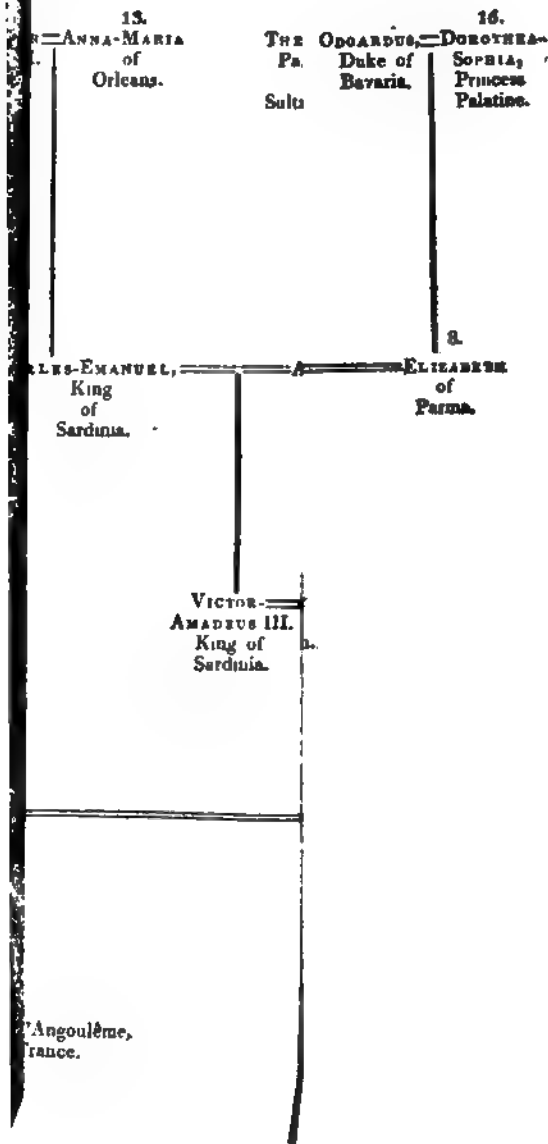
Most of the sovereign families of Europe affect to trace their origin to a very ancient

<sup>a</sup> See Table XXI.

To face p. (66) in sig. T.

# OF NOBILITY.

AND-PRIEUR DE FRA





tinguished on the continent, and their legislative character confers on the Peers of the Imperial Parliament of the United Empire, a dignity peculiar to themselves.

### NOTE XIII. p. 187.

THE TAILLE, in its origin, was a pecuniary imposition on those, who were not liable to military duty; the nobility were of course exempt from it. This, while feudalism prevailed, was perfectly just; for the nobility then served in the ranks as common soldiers; and, as every subject should contribute to the wants of the state, it was reasonable that those, who did not serve the state by their persons, should serve it by their purse. But, after the introduction of standing armies, the nobility ceased to serve in the ranks; and of course the original reason of their exemption from the taille no longer existed. From that time, the tax of the taille was highly objectionable: it was unequally borne, and strongly marked both to the public and to their own feelings, the inferiority of the class, which was liable, to the classes which were exempt from the payment of it.—The same observation applies to several other

privileges of the nobility.—See M. Mounier's *Recherches sur les causes qui ont empêché les Français de devenir libres*, tom. I. c. 12.

But, both the clergy and the nobility contributed largely in taxation: they were necessarily subject to excise, to customs, and to every other imposition levied on the consumer. The nobility paid the capitation, and a land-tax, under the name of *Vingtièmes*, of about four shillings in the pound: from those, the clergy, except in the conquered provinces, were exempt; but they made free gifts, and were liable to other burdens.

#### NOTE XIV. p. 194.

“ IN 1791,” said Brissot, writing to his correspondents in 1793, “ there were only three “ republicans in France, Buzot, Pétion, and “ myself.” “ A thousand similar confessions,” says Mallet du Pan, “ have escaped from the “ Republicans, during their quarrels among “ themselves.” But a more just representation of the state of the public mind, at the commencement of the revolution, is given by M. Mounier. By his account, one party, (which included a great part of the nobility, of the higher ranks of the clergy, and many of the princes of the blood royal), wished to preserve the states-general in their ancient form. Another party wished to

establish two deliberative assemblies in imitation of the English house of parliament; a third wished to establish in France, the federative republics of America; a fourth, nowise formidable by their numbers, but very formidable by their resources, foreseeing great troubles, were determined to avail themselves of them, to fix the royal power in the hands of some one whom they could manage at will. “ The two last of  
 “ the parties,” says Mounier, “or rather those  
 “ two wicked factions, the existence of which I  
 “ did not know, till after the assembly of the  
 “ states-general, had, for many months before,  
 “ established committees and their secret correspondencies: they were alike disposed to flatter the populace, to arm it with torches and  
 “ daggers, in order to strike terror into the  
 “ friends of the throne and of good order; to  
 “ destroy the sentiments of love and respect of  
 “ the people for the King, and to propagate the  
 “ most horrid calumnies. They sought to turn  
 “ to advantage all the imprudences of the court,  
 “ at a time when the difficulty of its position  
 “ precipitated it into imprudent measures.”

#### NOTE XV. p. 196.

THE best account of the exertions of the French philosophers to produce a new order of

things in church and state, is to be found in the first volume of the *Memoirs pour servir à l'histoire du Jacobinisme*, of the Abbé Baruel.

He has been accused of exaggeration ; but his account appears to be fully confirmed by the following extracts from the works of two celebrated persons, neither of whose testimony can be refused.

The first is Condorçet. “ There was a class  
 “ of men,” says that writer, “ which soon  
 “ formed itself in Europe, with a view not so  
 “ much to discover and make deep research  
 “ after truth, as to diffuse it ; whose chief object  
 “ was to attack prejudices, in the very asylums,  
 “ where the clergy, the schools, the governments,  
 “ and the ancient corporations had received and  
 “ protected them ; and who made their glory to  
 “ consist rather in destroying popular error, than  
 “ extending the limits of science : this, though  
 “ an indirect method of forwarding its progress,  
 “ was not, on that account, either less dangerous  
 “ or less useful.

“ In England, Collins and Bolingbroke ; in  
 “ France, Bayle, Fontenelle, Voltaire, Montes-  
 “ quieu, and the schools formed by these men,  
 “ combated in favour of truth. They alternately  
 “ employed all the arms with which learning,  
 “ philosophy, wit, and literary talents could fur-  
 “ nish reason. Assuming every tone and every

“ shape, from the ludicrous to the pathetic, from  
 “ the most learned and extensive compilation to  
 “ the novel, or the petty pamphlet of the day,  
 “ covering truth with a veil, which sparing the  
 “ eye, that was too weak, incited the reader’s  
 “ curiosity by the pleasure of letting him surmise  
 “ what was meant, insidiously caressing prejudice  
 “ in order to strike it with more certainty and  
 “ effect ; seldom menacing more than one at a  
 “ time, and then only in part, sometimes flatter-  
 “ ing the enemies of reason, by seeming to ask  
 “ but for a half toleration in religion, or a half  
 “ liberty in polity ; respecting despotism, when  
 “ they impugned religious absurdities, and re-  
 “ ligion when they attacked tyranny ; combating  
 “ these two pests in their principles, though ap-  
 “ parently inveighing against ridiculous and dis-  
 “ gusting abuses ;—striking at the root of those  
 “ pestiferous trees, whilst they appeared only to  
 “ wish to lop the straggling branches ; at one  
 “ time marking out superstition, which covers  
 “ despotism with its impenetrable shield, to the  
 “ friends of liberty, as the first victim which they  
 “ were to immolate, the first link to be cleft  
 “ asunder : at another, denouncing religion to  
 “ despots as the real enemy of their power, and  
 “ frightening them with its hypocritical plots and  
 “ sanguinary rage ; but indefatigable when they  
 “ claimed the independence of reason and the

“ liberty of the press, as the right and safeguard  
 “ of mankind ;—inveighing with enthusiastic  
 “ energy against the crimes of Fanaticism and  
 “ Tyranny, reprobating every thing which bore  
 “ the character of oppression, harshness, or bar-  
 “ barity, whether in religion, administration, mo-  
 “ rals or laws; commanding kings, warriors,  
 “ priests, and magistrates, in the name of nature,  
 “ to spare the blood of men; reproaching them  
 “ in the most energetic strain with that, which  
 “ their policy or indifference prodigally lavished  
 “ on the scaffold or in the field of battle; in fine,  
 “ adopting reason, toleration, and humanity, as  
 “ their signal and watchword.

“ Such was the modern philosophy, so much  
 “ detested by those numerous classes, whose  
 “ very existence was drawn from prejudices;—  
 “ its chiefs had the art of escaping vengeance;  
 “ though exposed to hatred, of hiding them-  
 “ selves from persecution, though sufficiently  
 “ conspicuous to lose nothing of their glory.”

The testimony of M. Mallet du Pan, (*Con-  
 siderations on the Nature of the French Re-  
 volution, and on the Causes which prolonged its  
 Duration*, p. 91, note), is equally decisive of the  
 nature and extent of the Jacobin conspiracy.

“ The conspiracy of the Jacobins,” he says,  
 “ is not a being of fancy. The actors in insur-  
 “ rections, in conflagrations, in massacres, really

“ form a confraternity. Systematically organised,  
 “ they have their catechism, their slang, their  
 “ colonels, their majors, their captains, their  
 “ profession and their noviciate, their points of  
 “ correspondence, their respective tasks, their  
 “ departments, their customs, and the laws of  
 “ their order. Even in foreign countries this  
 “ infernal society has its affiliated clubs; it has  
 “ excited all the master crimes of the Revolution,  
 “ and has attempted, in twenty parts of Europe,  
 “ commotions similar to those which it has raised  
 “ in France. It had its origin in the Palais-  
 “ royal, and has been the right hand of the lead-  
 “ ing conspirators. Rotondo, Fournier, (an Ame-  
 “ rican) Estienne, formerly a captain of the Sans  
 “ Culottes, at Brussels; L'Huillier, Procureur-  
 “ general of the department of Paris; Maillard,  
 “ formerly a bum-bailiff; the leading men of the  
 “ club of the Cordeliers, have been the principal  
 “ officers of this regiment. M. de la Fayette  
 “ knew it and dreaded it; but never had the  
 “ courage to attack it in earnest. The last en-  
 “ terprize plotted by Rotondo was at Geneva,  
 “ where he has been arrested some months  
 “ since. I could add some most extraordinary  
 “ details to these few lines; but I confine myself  
 “ to merely assuring the public, that they have  
 “ as yet but a very superficial knowledge of the  
 “ Revolution in its present state, and that one

“ cannot too much lament the improvidence of  
 “ those who think they sufficiently secure them-  
 “ selves against it, by raising some walls about  
 “ its territories.”

But no work, perhaps, contains so perfect a view of the designs and ultimate tendency of the Jacobin conspiracy as the Abbé de Mably's *Doutes proposés aux Philosophes économistes sur l'ordre naturel et essentiel des Sociétés politiques*; and his *Treatise des Droits et Devoirs des Citoyens*. The reader will find them a complete code of Jacobin principles: of the means they were to employ to accomplish their object; and a full view of the ultimate state of things which it was their great end and aim to produce.

It would, however, be a great injustice to confound together, all the writers, whose works have contributed to the French revolution. They may be divided into three classes:—under the first, may be ranked those, who were satisfied with pointing out to sovereigns, the duties, which they owe to their subjects, and the motives which religion and reason suggest to excite sovereigns to a faithful discharge of them. Those writers, though by making subjects feel their rights, they co-operated remotely in producing the general ferment which led to the revolution, are not only free from blame, but are entitled to the thanks of



mankind. Such were Fenelon and Massillon : the general duties of a sovereign, the wickedness and infamy of an oppressive, extravagant and voluptuous reign, are no where more eloquently, more pathetically, or more forcibly exposed than in the *Telomachus* of the former, or the *Petit Carême* of the latter. So much was this the case, that, during the contests of Lewis XV. with the parliaments, large editions of the *Petit Carême* of Massillon were repeatedly printed and circulated throughout the kingdom.

The same, (if allowance be made for some indiscreet expressions), may be said of Montesquieu ; and he had the additional merit of pointing out the general revolution of opinion which the diffusion of knowledge had produced, and was every day producing in France, and the necessity of appeasing it by the sacrifice of some abuses. Those, who are acquainted with that great man's writings, must be surprised to see him ranked among the conspirators against monarchy.

The general body of writers called the French Philosophers, then come for consideration : they may be divided into two classes,—at the head of one of them we may place Voltaire, at the head of the other, Rousseau.

From a settled plan, and even a serious wish of overturning the monarchy, justice requires us

to acquit the former; a slight limitation of the arbitrary power of the crown, and the privileges of the nobility, would have satisfied him: but the utmost he would have left to the church, was a decent maintenance for her ministers. On the other hand, Rousseau thought mankind could not be happy till every distinction of rank was abolished, and property was held in common.

In the different Assemblies each of those classes of writers had their disciples. The venerable bishop of Arles, the bishops of Clermont and Nancy, and a few more of the royalists, may be reckoned among the disciples of Fenelon and Massillon: M. Malouet, M. Mounier, M. Lally, and the general body of Monarchists and Constitutionalists, may be reckoned among the disciples of Voltaire: the Abbé Sieyès, Dapton, Marat, Robespierre and the general body of Jacobins, may be reckoned among the disciples of Rousseau.

When the hour of action came, the spirit of the masters appeared in their disciples. Like Fenelon and Massillon, the bishop of Arles, and the royalists of his character, thought it a sacrilege to touch either the altar or the throne. Like Voltaire, the Malouets, Mouniers, and Lallys, wished much alteration in the church, and some in the state, but like him, they wished these alterations effected without violence, and

were ready to fly at the first beat of a democratic drum:—to use an expression attributed to Mirabeau, they wished *une Revolution à la Grandison*.—The Jacobins, despised half reforms and half measures, they thought nothing would be quite right till the church and state were destroyed, and the golden year should arrive, when, according to the expression attributed to Diderot, the last king should be strangled with the guts of the last priest.—In the schemes of the Jacobins, the monarchists and constitutionalists unfortunately co-operated; but it was unintentionally; they were the first to appeal to the people, but their appeal was certainly accepted beyond their wishes.

#### NOTE XVI. p. 208.

IN the Notes at the end of some of the Sections of this compilation, mention has been made of SEVERAL WORKS CONSULTED IN IT BY THE WRITER. It may be added, that in the part of it which relates to the history of Germany, during the middle age, he frequently turned to *Jacobi Caroli Speneri Notitia Germaniæ Antiquæ, cui accedit conspectus Germaniæ Mediæ; cum tabulis Geographicis. Hala Magdeburgicæ, 1717, 2 vol. 4to.* In every part of the compilation he consulted the same writer's

*Historia Germaniæ Universalis et Pragmatica*, Lipsiæ et Halæ 1716, 2 vol. 8vo.—Heineocius's *Elementa Juris Germanici*, Halæ, 1736, 2 vol. 8vo.—Pfefell's *Nouvel Abrégé Chronologique de l'Histoire et du Droit Public d'Allemagne*, Paris 1777, 2 vol. 8vo.—Mr. Dornford's translation of Mr. Professor Pütter's *Historical Development of the present political Constitution of the Germanic Empire*, London, 1790, 3 vol. 8vo.—And *Histoire des Allemands traduite de l'Allemand de Smidt ; par I. C. de la Vaux, a Liège, 1784, & seq. 8 vol. 8vo.*

In the genealogical part of the compilation, he particularly consulted *Anderson's Royal Genealogies*, a work of surprising labour and research. It is to be wished that the author had mentioned his sources of information. If, (what is much wanted), a new edition of it should be undertaken, it will greatly enhance its value, that an Introduction should be prefixed to it, containing an history of the rise and progress of Genealogical and Heraldic Learning, and an account, in the nature of a French Catalogue Raisonné, of the principal writers consulted in it; and that, at the head of each Genealogy, the work, from which it is extracted, should be mentioned.—The writer consulted also the *Theatrum Genealogicum* of Henningses, 6 vol. fol.

1598, a work of curious and recondite learning, and probably the stock of all subsequent works on Genealogy;—*The Notitia S. R. Imperii Procerum* of Imhoff, Stutgardiae, fol. 1699; and *Le Sige's* and *l'Avoisne's* useful *Genealogical and Historical Charts*.

In his account of the House of Austria, the writer consulted *Krafft's Histoire Genealogique de la Maison d'Autriche*, Bruxelles, 1744, and 1745. 3 vol. fol., and Mr. Coxe's valuable *Memoirs* of that illustrious house.

On the Guelphic Dynasty, he consulted *Rimius's Memoirs of the House of Brunswick*, and *Mr. Gibbon's Antiquities of the House of Brunswick*. It is much to be lamented that Mr. Gibbon left it unfinished, and that it abounds with so many obscure passages.—A person, to whom the subjects are familiar, will frequently be instructed and generally entertained with it, and with *The Digression concerning the House of Courtenay*: but those, to whom the subjects are new, will seldom derive pleasure or instruction from them.—On the same subject he had the assistance of the *Origines Guelficae* of Scheidius, Hanovera, 1750. 2 vol. fol.—a model of Genealogical History. After a fruitless search for it among the English booksellers, the author was indebted for the loan

of it, to the Earl of Leicester. The general scarcity, in London, of works of foreign history, and foreign literature, has long been a subject of wonder and complaint: but it should appear incredible, that, in the greatest capital in the world; there should not be on Sale a single copy of a work of so much consequence to the family history of its Sovereign.—This circumstance shows how desirable it is, that access to the public libraries of London should be made as easy as possible.

In what he has said on the Revolutions of France, the writer found great use in the *Theorie du Monde Politique, ou de la Science du Gouvernement considérée come Science exacte, par Ch. Hiss. 8vo. Paris, 1806*; and *La France pendant Quatorze Siècles, ou Preuves de la Constitution de la Monarchie Française dans différens Ages, par M. de Blaire, Londres, 1796, octavo*. A chain of historical writers on the French Revolution might be supposed:—on its first link we might place the writings of Durosai and Montjoye, as possessing the utmost degree of veneration for the ancient regime, compatible with any thing like a wish for rational reform:—on the next the *Histoire de la Revolution de 1789 par leurs amis de la liberté*, as expressing the most ardent admiration of the new order of things compatible with any thing like respect for ancient

forms — Not far from the last we might place *Toulongeon* and *Desdeards*, and between them and the centre link the more moderate *La Croix* on the other side of the centre link we place *Bertrand de Moleville* and the *Comte de Puisaye*, as writers warmly attached to the persons and government of the Bourbons: insensible of their faults, though they wish to hide them; like our Clarendon, more partial in their account of characters, than in their relation of facts; and therefore more partial in appearance than reality. Nearer still to the centre we should place *Mallet du Pan*: most of his judgments on men and things will probably be ratified by posterity. The *Memoires* of *Abbé Baruel* abound with curious matter. He asserts a threefold conspiracy of the French philosophers, against christianity, monarchy, and civil government in general. His proofs of the first are decisive; his proofs of the latter have been warmly contested by M. Mounier: but the dispute between them is almost verbal; it can be conceded to M. Mounier that the French philosophers never had a serious thought of overturning the monarchy, but the disorganising effect of their writings and cabals, however unintentional on their part, must be admitted to the Abbé. In respect to their alleged conspiracy against civil government in general, some

visions on a general equalization of rank and community of property may be found in the writings of the Abbé de Mably and Rousseau, but it is not shown that any thing of the kind entered into the views of any actor in the French Revolution, until long after its commencement. The most curious part of the Abbé's work is that which relates to the Illuminés, particularly the deduction of them from the ancient Manichees through the Knights Templars, the Albigenses, and the Freemasons. He certainly shows that the ultimate tendency of the principles of the Illuminés was subversive of civil government, and contributed much to the disorganization of Germany. This is almost conceded by M. Mounier, who says the Illuminés were illegal, and ought to be suppressed : but the intercourse of the Illuminés with the French philosophers is not shown : and they were so far from being even one of the efficient causes of the French Revolution, that it would have had the same rise, and made the same progress, if Illuminism had not existed.

The Templar extraction of the Mason was a fanciful conception of some German writers, but it seems completely disproved by the late researches of Professor Moldenhaver and Münter. An account of these, with observations of the author's own researches, is given in the *Memoires*



*Historiques sur les Templiers, &c. par Ph. G. J.* 1805, &c. in which the origin and fate of knights are discussed with learning and candour. The result appears to be that, after the destruction of the Manes, the European Manichees retreated, and carried their doctrines with them into the East; that they made a second appearance in Europe about the beginning of the ninth century, and that during the following centuries they, and their disciples under various appellations, as Paganians, Albigenses, Bogards, Brethren of the Free Spirit, spread over Europe, into several countries hostile to church and state; that the Knights Templars were much infected by them, that they had, generally, lost the spirit of their order, and led dissolute lives: and that in some houses the worst of abominations were committed; that their wealth and power were enormous: that Philip the Fair set the persecution on foot from motives of personal animosity and avarice, and that the Pope was his creature; that from the tortures inflicted on them, and the rewards held out to them, they extort the acknowledgment of their guilt, and no reliance can be placed either on their own confessions, or on the sentences of their Judges. Finally, that whatever opinion may be formed of the degree of corruption which prevailed in the Order, there is no proof that apostasy from Christianity, or an opinion of the lawfulness of

sensual practices imputed to them, was either general, or a secret doctrine of the Order.—On that very desirable object, the Re-union of Christians, he had the advantage of perusing, the interesting, though sly, Essay of M. Bonald, *de l'Unité Religieuse*.—The free use, which the Honourable Robert Clifford gave him of his invaluable collection of Maps, was of the greatest advantage to the writer :—*Sic siti lætantur lares*,—the literary lares are never so pleased, as when they preside over a collection made with so much science, and communicated with so much liberality.

THE END.

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96<sup>2</sup>

### ERRATA.

Page 6, line 6, *for Germaniacis-Rhenana, read Germania cis Rhenana.*

33, last line, *for Erancia, read Francia,*

112, line 18, *for his Uncle Ernest, read Ernest the son of Leopold  
the great-uncle of Albert :*

146, line 16, *for reviewed, read viewed*

#### *In the Proofs and Illustrations*

82, line 2, *for Desdeards, read Desleards*

83, line 24, *for Mason, read Masons*





p 86 B.

ORÆ JURIDICÆ SUBSECIVÆ;

BEING A CONNECTED

SERIES OF NOTES

RESPECTING

THE GEOGRAPHY, CHRONOLOGY,

AND

LITERARY HISTORY

OF THE

PRINCIPAL CODES AND ORIGINAL DOCUMENTS

OF THE

GRECIAN, ROMAN, FEUDAL

AND

CANON LAW.

Quare quis tandem me reprehendat, si quantum cæteris ad festos dies ludorum celebrandos, quantum ad alias voluptates, et ad ipsam requiem animi et corporis conceditur temporis: quantum alii tempestivis convivis, quantum alex, quantum pilæ, tantum mihi egomet, ad hæc studia recollenda, sumpsero.

CIC. PRO ARCHIA.

Le changement d'étude est toujours un relâchement pour moi.

D'AGUESSEAU



THE following sheets contain a series of Notes  
on the GRECIAN, ROMAN, FUEDAL AND  
CANON LAW.



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part of Greece. At subsequent periods, it was peopled by various colonies from Ægypt and Phœnicia. For a considerable time, all its inhabitants lived in a wild and barbarous state. Afterwards its fabulous, heroic, and historical ages successively follow.

## II.

II. 1. ITS LEGISLATION may be traced to its *Fabulous Age*.

In the mythology of the Greeks, Chaos was the first of beings, and gave birth to Cœlum and Tellus, to Erebus and Nox : Cœlum and Tellus were the parents of Jusjurandum and Themis ; Erebus and Nox were the parents of Nemesis. Jupiter had Astræa and Dicé by Themis ;—when the deities resided on earth, in the golden age, Astræa presided over the administration of justice ; and when, in consequence of the vices of men, the deities fled to heaven, she was the last of them who remained on earth ; but, at length, quitted it, and was translated into the sign Virgo, next to Libra, her balance. Ceres, the daughter of Saturn and Ops, taught mankind tillage, the worship of the Gods, the use and rights of separate property, respect to parents, and tenderness to animals : on this account, both in the Greek and Latin writers, she is called the law-bearing Ceres ; and both in Greece and Rome,

she was worshipped, and had temples dedicated to her, under that name. Before Christ.

The earliest account of the fabulous age, on which any reliance can be placed, commences about nineteen hundred and seventy years before Christ; when Argos, from which the north-eastern territory of Peloponnesus received its denomination, first began to acquire political eminence. It is said to have been founded by Inachus, in . . . . . 1970

His descendants filled the throne, till Gelanor, the 10th of them in succession, was expelled by Danaüs, a prince of Ægypt . . . . . 1586

He is mentioned by some writers, as the first legislator of the Greeks; from him, the people of the peninsula, till then called Pelasgians, received the name of Danaans, which they retained in Homer's time.

II. 2. From that period, some appearance of real history being discernible in the accounts we have of what is generally called the fabulous age of Greece, it is supposed to verge to a conclusion, and the *Heroic Age* of Greece, is supposed to begin. The regular history of Grecian legislation commences with Theseus, one of the



celebrated persons, from whom that age received its appellation.

In a military expedition to the kingdom of Crete, undertaken by him, to deliver the Athenians from an ignominious tribute, paid by them to the monarch of that island, he had become acquainted with the laws of Minos. The excellence of those laws is highly celebrated by the writers of antiquity: to us, they are chiefly known, as the foundation on which Theseus, and after him Lycurgus, built their respective systems of legislation. In the public education of the children, the public repasts of the people, at which the rich and poor promiscuously attended, the division of the inhabitants into freemen and slaves, and some other institutions of Minos, we trace the general system of legislation, adopted by the Spartan legislator. It is observable, that Minos was the first sovereign, to whom the splendid prerogative of the Dominion of the Sea<sup>a</sup> was assigned; but probably it was confined to the Cretan and a small part of the Ægean Seas. On his death it was assigned to the princes of Argos.

On the return of Theseus from Crete, he abolished private jurisdictions, and subjected the whole territory of Athens to one common sys-

<sup>a</sup> SEE APPENDIX, NOTE I.

em of legislation ; he divided the common-  
 wealth into nobility, husbandmen, and ar-  
 tificers ; and established an uniformity of  
 religious rites and sacrifices. To the no-  
 bility and husbandmen he appropriated the  
 executive powers, with the superintendency  
 of religion : but a share in the legislation  
 was given to all ; no distinction prevailed,  
 as in every other Grecian province, and  
 afterwards in the Roman world, between  
 the people in the capital, and the rest of the  
 people ; all were united, under the general  
 name of Athenians, in the enjoyment of  
 every privilege of Athenian citizens, and  
 the monarch was rather their first magis-  
 trate than their sovereign. In consequence  
 of these wise regulations, the Athenians  
 seem to have acquired more civilized man-  
 ners than the rest of the Greeks ; they were  
 the first who dropt the practice of going  
 constantly armed, and thus introduced a  
 civil dress in contradistinction from the  
 military.

The subject leads to the mention of no-  
 thing of importance before the taking of  
 Troy . . . . . 1289

In his description of the shield of  
 Achilles, Homer gives a striking account  
 of a trial at law, in his times.

“ The people were assembled in the market-  
 “ place, when a dispute arose between two men,  
 “ concerning the payment of a fine for man-  
 “ slaughter : one of them addressed himself to  
 “ the by-standers ; asserted that he had paid the  
 “ whole ; the other insisted, that he had received  
 “ nothing ; both were earnest to bring the dispute  
 “ to a judicial determination. The people grew  
 “ noisy in favour, some of the one, some of the  
 “ other ; but the heralds interfering, enforced  
 “ silence ; and the elders approaching, with  
 “ sceptres of heralds in their hands, seated them-  
 “ selves on the polished marble benches in the  
 “ sacred circle. Before them, the litigants, ear-  
 “ nestly stepping forward, pleaded by turns,  
 “ while two talents of gold lay in the midst, to  
 “ be awarded to him, who should support his  
 “ cause by the clearest testimony and the clearest  
 “ argument.”

We find from Homer's writings, that, in his  
 time, the rights of primogeniture were conside-  
 rable ; that, murder was punished rather by pri-  
 vate revenge than public justice ; that, conjugal  
 infidelity, on the woman's part, was esteemed an  
 heinous offence ; that, on the man's, it was little  
 regarded ; and that, the breach of virgin honour  
 was scarcely thought a crime.

It is observable that Homer makes no mention  
 either of a pure republic, or of the absolute rule

of one man : he is supposed to have been favourable to monarchical government ; but it is said to be discoverable from his works, that, when he wrote, the general tendency of the public mind of Greece was democratic.

In the course of time, democracy obtained a complete victory over monarchy, in every part of Greece. The Heraclidæ, having acquired a settlement in Doris, invaded and made themselves masters of all Peloponnesus, except Arcadia. At first, they established a limited monarchy in the different provinces they conquered ; but, having quarrelled among themselves, and confusion universally prevailing, monarchy was almost every where abolished, and the words, Tyrant and King, became synonymous.

II. 3. Here the heroic age of the history of Greece draws to a conclusion, and we perceive the dawn of its *Historical Æra*.

From this time, Greece must be considered as formed of a multitude of independent states, exercising complete sovereignty within their respective territories ; bound together by no federal union, but connected by language, by their notion of a descent from a common stock, by a similitude of religious belief, and by frequent meetings at public games.

But nothing contributed to this general union more than the council of the Amphictyons : it is

supposed to have been instituted by Am-<sup>Before</sup>  
 phictyon, the son of Deucalion. It met <sup>Christ.</sup>  
 sometimes at Thermopylæ, sometimes at  
 Delphi; the members of it were chosen by  
 the principal cities of Greece. The object  
 of the institution was to decide the differ-  
 ences, which happened among the Grecian  
 states. Their determinations were always  
 held in great veneration; and their influence  
 is supposed to have continued till the reign  
 of Antoninus Pius.

During the whole of the historical æra of  
 Greece, except when some singular event  
 raises a particular state into notice, Lace-  
 dæmon and Athens alone engage the  
 attention of the historian or civilian.

### III.

THE æra of Grecian legislature begins  
 with the LAWS OF LYCURGUS, the  
 most singular institution recorded in his-  
 tory . . . . . 926

He established two Kings, and a Senate  
 of twenty-eight members, appointed for  
 life; the Kings were chosen by the people,  
 were hereditary senators, high priests of  
 the nation, and commanders of their ar-  
 mies; but they were controuled, in the  
 exercise of their power, by five Ephori.

## THE GRECIAN LAW.

9

created annually. With the senate, all laws were to originate ; the general assembly of the people had the power of confirming them ; but public debate was wholly forbidden the general assembly. Lycurgus effected an equal division of land among all the citizens ; he abolished the use of gold and silver ; and ordained, that all children should be educated in public : every citizen was to be a soldier ; all sedentary trades, and even agriculture, were forbidden them ; the ground was cultivated by the Helotæ, a kind of slaves, whom the Lacedæmonians treated with the greatest cruelty.

Thus, Lycurgus effected a total revolution of law, property, and morals, throughout the whole of the Spartan territory : no legislator ever attempted so bold a plan. It has been observed, that, if he had merely been a legislator in speculation, his scheme would have been thought more visionary than Plato's ; it may be added, that, if the existence and continuance of his institutions were not proved, beyond argument, by the highest degree of historical evidence, the relations of them would be pronounced a fiction, on account of, what would be termed, their evident impracticability. Yet, the first establishment of them was attended with little resistance, and with no political convulsion ; they remained in vigour longer than any political institution of antiquity

known to us, and were respectable even in <sup>Before</sup> their decay. <sup>Christ.</sup>

## IV.

1. DRACO was the first legislator of ATHENS: of his laws, we know little more, than that their extreme severity was proverbial. . . . . 624

He made all crimes capital, on the ground, that a breach of any positive law was a treason to the state.

Solon framed for his countrymen, a new and milder system of law. . . . . 594

Mr. Tytler's Elements of Ancient History, 1st vol. 49—52, give us the following concise and clear view of *Solon's Legislation*.

“ Solon, an illustrious Athenian, of the  
 “ race of Codrus, attained the dignity  
 “ of Archon 594 B. C. ; and was intrusted  
 “ with the care of framing, for his country,  
 “ a new form of government, and a new  
 “ system of laws. He possessed exten-  
 “ sive knowledge, but wanted that intre-  
 “ pidity of mind, which is necessary to  
 “ the character of a great statesman. His  
 “ disposition was mild, and temporising..  
 “ and, without attempting to reform the  
 “ manners of his countrymen, he accom-

modated his system to their prevailing habits and passions.

“ The people claimed the sovereign power, and they received it : the rich demanded offices and dignities : the system of Solon accommodated them to the utmost of their wishes. He divided the citizens into four classes, according to the measure of their wealth. To the three first, (the richer citizens,) belonged the offices of the commonwealth. The fourth, (the poorer class,) more numerous than all the other three, had an equal right of suffrage with them, in the public assembly, where all laws were framed, and measures of state were decreed. Consequently the weight of the latter decided every question.

“ To regulate, in some degree, the proceedings of their assemblies, and balance the weight of the popular interest, Solon instituted a senate of 400 members, (afterwards enlarged to 500 and 600,) with whom it was necessary that every measure should originate, before it became the subject of discussion in the assembly of the people.

“ To the court of Areopagus he committed the guardianship of the laws, and the power of enforcing them, with the supreme administration of justice. To this tribunal belonged, likewise, the custody of the treasures



“ of the state, the care of religion, and a tu-  
“ toral power over all the youth of the republic.  
“ The number of its judges was various, at dif-  
“ ferent periods, and the most immaculate purity  
“ of character was essential in that high office.

“ The authority of the Senate and Areopagus  
“ imposed some check on the popular assemblies;  
“ but, as these possessed the ultimate right of  
“ decision, it was ever in the power of am-  
“ bitious demagogues to sway them to the worst  
“ of purposes. Continual factions divided the  
“ people, and corruption pervaded every depart-  
“ ment of the state. Their public measures,  
“ the result of the interested schemes of indi-  
“ viduals, were often equally absurd as they  
“ were profligate. Athens often saw her best  
“ patriots, the wisest and most virtuous of her  
“ citizens, shamefully sacrificed to the most de-  
“ praved and most abandoned.

“ The particular laws of the Athenian state  
“ were more deserving of encomium than its  
“ form of government. The laws relating to  
“ debtors were mild and equitable, as were those  
“ which regulated the treatment of slaves. But  
“ the vassalage of women, or their absolute  
“ subjection to the control of their nearest re-  
“ lation, approached near to a state of servitude.  
“ The proposer of a law, found on experience  
“ impolitic, was liable to punishment ; an enact-

“ ment apparently rigorous, but probably neces-  
“ sary in a popular government.

“ One most iniquitous and absurd peculiarity  
“ of the Athenian, and some other governments  
“ of Greece, was the practice of the ostracism,  
“ or a ballot of all the citizens, in which each  
“ wrote down the name of the person in his  
“ opinion most obnoxious to censure; and he  
“ was thus marked out by the greatest number  
“ of voices, and, though unimpeached of any  
“ crime, was banished for ten years from his  
“ country. This barbarous and disgraceful in-  
“ stitution ever capable of the grossest abuse,  
“ and generally subservient to the worst of pur-  
“ poses, has stained the character of Athens  
“ with many flagrant instances of public ingra-  
“ tude.” A full account of the laws of Athens  
may be found in Archbishop Potter’s *Archæo-  
logia Græca*, B. I. The fragments of them were  
published by Petitus, with an excellent com-  
mentary. A splendid edition of this work, with  
his own notes and those of Palmerius, Salvinus,  
and Duker, was published by Wesseling, in  
1742.

IV. 2. This may be considered a succinct  
view of the constitution of Athens, as it was  
established by Solon. The following is a short  
account of their *Forensic Proceedings* in the civil  
administration of justice.

## II.

THE first object in the study of the Roman Law, is to obtain an accurate view of the LIMITS OF THE COUNTRIES, in which it prevailed, before the dismemberment of the empire. They may be divided into Italy, the conquests of the Romans in the other parts of Europe, and their conquests out of Europe.

II. 1, *Italy* lies 7. 19. East long. and 38. North lat. : the Alps divide its northern part from France, Switzerland, and Germany ; on the other side, it is washed by the Mediterranean. Its natural separation is into its northern, central, and southern divisions. Its northern division contains the modern Lombardy and the territory of Venice and Genoa, and reaches on every side to the Alps. from a line which may be supposed to be drawn from the Rubicon on the eastern side to the Macra on the western side of Italy.<sup>4</sup>

Its central division extends from the Rubicon to the Trento, near the Fortiori, on the eastern side, and from the Macra to the Silaro, on the western ; and comprises Etruria, Umbria, Cisalpinum, Sabina, Latium, Lavinium, and Campania, or Tuscany, the Ecclesiastical State, and the territory of Naples : its southern part con-

<sup>4</sup> SEE APPENDIX, NOTE II.

possessing him of his term. To make it serve as a legal process for recovering the freehold, the law now supposes, that the party dispossessed has entered on the land ; that he has executed a lease of it ; and that his lessee has been dispossessed ; for this injury, the lessee brings his action of ejectment to recover the term granted by the lease : now, to maintain his title to the lease, he must shew a good title in his lessor : and thus incidentally and collaterally the title to the freehold is brought before the court. In the jurisprudence of Athens, the guardian and ward were so far identified, that the latter could not maintain an action against the former ; so that, for any injury done to his property, the ward, during the term of pupillage, was without remedy. For his relief, the law authorized the Archon to suppose a lease had been executed by the ward to a stranger ; then, the stranger, a kind of next friend, was to bring his action against the guardian, for the injury done to his property during the term ; and, if he recovered, he became trustee of what he recovered for the ward. Thus, in each case, a fictitious lease was used as a legal process for bringing the real merits of the case to trial.

Sir Matthew Hale, in his History of the Common Law, and Sir William Jones, in the Notes

to his translation of Isæus, make particular mention of the law of succession at Athens. It is observable, that, though a general equality of property was one of the principal objects of Lycurgus's legislation, he assigned to the eldest son almost the whole of his parent's property, with an obligation of providing for his sisters and younger brothers. Before Christ.

## V.

WITH the death of Solon, the æra of Grecian legislation finishes, and the æra of her military glory begins. But early in this brilliant period of her history, 490 THE DECLINE OF THE LAWS OF ATHENS AND LACEDÆMON is discernible.

With respect to *Athens*, it has been mentioned, that, by the laws of Solon, the lowest class of citizens had been excluded from offices of state. These, on the motion of Themistocles, were opened to them : this lessened the general dignity of the magistrature, and introduced venality and disorder into every department of the ad-

ministration. Here, however, the mischief did not rest. As the poor were under a necessity of giving almost the whole of their time to the labour, on which their daily sustenance depended, they had scarcely any opportunity of attending the public assemblies of the people; but, on the motion of Pericles, every Athenian, who assisted at a public assembly, received three oboli for his attendance; this increased the tumult and corruption of the public assemblies; and this was not the only instance in which Pericles sacrificed much of Solon's law to the caprice of the people.

In respect to *Lacedæmon*, the victories of Lysander and Agesilaüs carried the Spartans into foreign countries, and brought the wealth of foreign countries into Sparta. The consequence was, that what the Lacedæmonians gained by their military successes, they lost in consequence of the decline, which those very successes occasioned, of the principles and habits of heroic virtue, which the legislation of Lycurgus had inculcated among them, and which had made them the wonder of Greece.

Insensibly the glory of Athens and Lacedæmon expired. At the battles of Leuctra and Mantinæa, they received a check, from which they never recovered.

At the battle of Cheronæa, king Philip  
Macedon obtained a complete triumph  
over the Athenians; and, by degrees, the  
laws of Solon fell into disuse.

By the direction of Antipater, to whom  
the general superintendence of the affairs  
of Greece was committed by Alexander the  
Great, when he set out on his expedition  
to Persia, they were restored, with some  
modifications, by Demetrius Phalareus, and  
continued in that state, while Greece was  
subject to Alexander's successors. . . . . 250

When the Romans conquered Greece,  
they allowed to the different states the use  
of their laws; insensibly the Romans ac-  
quired a taste for the arts and literature of  
Greece, and this particularly recommended  
the Athenians to them.

On a complaint by the Athenians, that  
too many changes had been made in the  
laws of Solon, the Emperor Adrian ac-  
cepted the office of Archon, and restored  
the ancient law.

The Emperor Constantine was not so  
favourable to the Athenians:—in the Em-  
peror Julian they had a zealous friend.  
By an edict of the Emperor Justinian  
schools of Athens were shut up: th

Before  
Christ.  
337

After  
Christ

is generally assigned as the æra of the extinction of Paganism, and of the absolute decline of the philosophy and jurisprudence of Athens. . . . . 529

After  
Christ.

With the history of the decline of the Laws of Lycurgus, we are less acquainted. Though in a state of decay, their appearance was venerable in the time of Polybius: perhaps they suffered less than the Laws of Athens, during the Macedonian influence in Greece; and probably they engaged less of the attention of the Romans; but we have no reason to suppose they long survived the Athenian Law.

On the division of the empire between the sons of Theodosius, Greece was allotted to the Emperor of the East: it suffered much from the incursions of the Goths under Alaric. 395

In the twelfth century, the emperor Manuel divided Peloponnesus among his seven sons: before this time, from the resemblance of its shape to that of a mulberry tree, called Morea in Greek, and Morus in Latin, it had received the appellation of the Morea. In the next century, when Constantinople was taken by the Western Princes, the maritime cities of Peloponnesus, with most of the islands, sub-



mitted to the Venetians. In the fifteenth century, the whole Morea fell an easy prey to Mahomet II, after his conquest of Constantinople. Towards the close of the seventeenth century, the Ottomans were expelled from it by the Venetians, and it was formally ceded to them by the Porte, at the treaty of Carlowitz: but, about fifteen years afterwards, it was regained by the Porte, and now forms a part of their empire, under the appellation of the Beglerbeg of Greece. It is governed by a military officer, called a Sangiac, who resides at Modon.

After  
Christ  
1461

169

Such have been the rise, progress, and decline of the Laws of Greece.

The great influence of the Roman Law on the jurisprudence of modern nations is strikingly discernible, in every part of their laws:—if it be true, that Rome derived her law from the Athenian code, the “*Græcia capta ferum victorem cepit.*” is as applicable to the legislation as it is to the arts of Greece.\*

\* This article is principally extracted from *Ubb Emmius's Vetus Græcia Illustrata*, 3 vol. 8vo the best Geographical account of Greece, which has yet appeared; from *Archbishop Potte Antiquities of Greece*, a work of great learning

from *Bruning's Compendium Antiquitatum Græcarum ; Francoferti ad Mænum*, 1 vol. 8vo. 1735, an useful abridgment of the Archbishop's work ; from various treatises of Meursius, particularly his *Themis Attica* ; from *Mr. Mitford's* and *Dr. Gillies's Histories of Greece* ; and from *Sir William Jones's Translation of Isæus* a lasting monument of his industry, and his wonderful quickness in the acquisition of accurate and extensive knowledge, even of the abstrusest kind.

# THE ROMAN LAW.

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## I.

**T**HOSE, who wish to trace the **ROMAN LAW** to its origin, almost immediately find themselves obliged to form an opinion on a point which has been the subject of much discussion, and a decision upon which is not very easy, *the degrees of credit due to the histories, which have reached us, of the five first ages of Rome.* The credibility of them was ingeniously attacked by M. de Pouilly, and as ingeniously defended by L'Abbé de Salier, in their dissertations on this subject, in the *Mémoires de l'Académie.* In his discourses *Sur l'incertitude des cinq premiers siècles de l'histoire Romaine,* M. de Beaufort seems to have determined the question. By a variety of arguments, drawn from the scantiness of the materials, from which these histories appear to have been framed, from the romantic nature of several of the exploits recorded in them, the improbability of many, and evident falsehood of some of their relations, and from the contradictions and absurdities, with which they frequently abound, he shows that, at least, where they descend into

particulars, they should be read with a considerable degree of distrust. What they mention of the populousness of Rome, which, before the end of her second century, contained, by their accounts, 500,000 persons, appears incredible; that a smaller number would not have sufficed to construct the public works, with which, even then, Rome abounded. This circumstance has struck some modern writers so forcibly, that, to account for it, they have supposed, that Rome was raised on the ruins of a city, which, though now wholly forgotten, was once populous and magnificent, and the seat of a powerful empire. In pursuing this research, some have found such an empire among the Etruscans. With the particulars of the history of that people, we are well acquainted; but we have certain information, that, long before the æra of the foundation of Rome, they were a flourishing state, excellent in arts and arms.\*

SEE the Appendix to the ancient Universal History, vol. 18. p. 187, and Maffei's Verona Illustrata, B. I. The expression of Livy, B. I. c. 2, is very strong, "*Tanta opibus Etruria, ut jam non terras solum, sed mare etiam per totam Italiam longitudinem, ab Alpibus ad fretum Siculum, famâ nominis sui implesset.*" On the other hand, the silence of Herodotus may be thought a strong argument against the existence of such a city in his time.

the remainder of Italy, the Marsi, the Samnites, the Apulians, and the Lucanians. Before the Roman conquests of it, the northern division of Italy had been occupied by a colony of Gauls : on that account, it was known to the Romans, by the name of Gallia Cisalpina ; and, from its being intersected by the Po, the northern division, made by that river, was called by them the Transpadanan, the southern was called the Cispadanan Gaul. The southern part of Italy was peopled by colonies from Greece ; on that account it was called Magna Græcia, by the Romans :—the part between Gallia Cisalpina and Magna Græcia, was called Italia Propria, or Proper Italy. The part of the Mediterranean, on the eastern side of the peninsula, was called the Higher, and afterwards the Hadriatic Sea ; the part on its western side, was called the Lower or Tyrrhenean Sea.

With respect to its Antient State, it is probable, that the greatest part of Italy was in possession of the Hetruscans, when, about the year 964 before Christ, Evander arrived in Latium, and built a small town called Palantium. It is supposed, that Latinus reigned there, about the time of the Trojan war ; that, in his reign, Æneas landed in Italy, married Lavinia his daughter, and built Lavinium ; that Ascanius, the son of Æneas, built Alba ; that Romulus descended from him, and laid the foundation of Rome 753 years before Christ.

The monarchical government of Rome subsisted about 250 years; during the whole of this time, Rome was engaged in war with her neighbours; and perhaps the utmost extent of her conquests did not exceed a circumference of fifteen miles. In the next 250 years, the Romans conquered the remaining part of Italy, from the Alps to its southern extremity: then the conflict between her and Carthage commenced. From the destruction of Carthage, the æra of her foreign conquests may be dated; in the reign of Augustus, they reached the Atlantic, on the west; the Euphrates, on the east; the Rhine and the Danube, on the north; and Mount Atlas and the Cataracts of the Nile, on the south: under Domitian, they were carried to the Frith of Forth and the Clyde; and, under Trajan, over the Danube into Dacia, and over the Euphrates, into Mesopotamia and Armenia.

II. 2. *The European part of this spacious conquest* contained Hispania, or the kingdoms of Spain and Portugal:—Gaul, which comprised the whole country between the Pyrenees, the Ocean, the Rhine, and the Alps, or the present territory of France, with the addition of Switzerland:—Britannia, which comprised all England, Wales, and the lowland parts of Scotland, up to the Frith of Forth and the Clyde:—the Rhetian and Vindelician provinces, which nearly comprised

the Grisons, the Tyrolese, and a part of Bavaria:—the Norican, Pannonian and Dalmatian provinces, which, under the general name of Illyricum, filled the country between the Danube and the Hadriatic, up to ancient Greece—Moesia, which comprised Servia and Bulgaria:—and Dacia, which comprised Temeswar and Transylvania, the only part of the Roman territory beyond the Danube; and Thrace, Macedonia, and Greece, the Roumelia of the Turks.

II. 3. *The Roman conquests out of Europe* reached over Minor Asia, Syria, Phenicia, and Palestine; over Ægypt, as far as Syene; and over the whole northern frontier of Africa. It should be added, that the countries on the northern shores of the Euxine, from the Danube on the west to Trebizond on the east, were tributary to the Romans, received their Kings from Rome, and had Roman garrisons.\*

\* THIS article is chiefly extracted from the second chapter of the first volume of Mr. Gibbon's history; the geography of that work is unquestionably entitled to the highest praise.

### III.

THESE were the limits of the Roman empire; her subjects may be classed under the following divisions.

III. 1. The highest class of subjects was that of Roman citizens, or those who had the *Jus Civitatis*.

At a distance of about fourteen miles from the sea, the city of Rome stands on a cluster of small hills, contiguous to each other, rising out of an extensive plain, washed by the Tiber. At first, it was confined to the Palatine Hill; the Capitol was added to it by Titus Tatius; the Quirinal, by Numa; the Celian, by Tullus Hostilius; the Aventine, by Ancus Martius; and the Viminal and Esquinal by Servius Tullius. The city was surrounded by a wall; a strip of ground, on each side of it, was called the *Pomœrium*; the walls and *Pomœrium* were sacred: whoever extended the limits of the empire, had a right to extend the walls of the city; its last and greatest extension, was in the time of the emperor Aurelian: he inclosed the Mons Pincius and Campus Martius within its walls. In 850, Pope Leo added to it the Mons Vaticanus. At first, it was divided into four districts or regions; Augustus divided them into fourteen; modern Rome is divided into the same number; but the scites of the ancient and modern districts or regions, considerably differ.

At first, all who fixed their residence in any part of the Roman territory, had the *Jus Civitatis*, or the rights of Roman citizens: afterwards



the *Jus Civitatis* was conferred on few, and generally with limitations ; in the course of time, it was granted to all of the Latin name. After the civil war, it was conferred on all the inhabitants of Italy, south of the Rubicon and Lucca : then it was granted to the Cisalpine Gaul, which, from this circumstance, was called *Gallia Togata* : finally, Caracalla communicated it to all the inhabitants of the Roman world.

The *Jus Civitatis* attached to those, who possessed it, the public rights and obligations attending the census, or enrolment in the censors' books ; the *Militia*, or serving in the army ; the *Tributa*, or taxation ; the *Suffragium*, or voting in the different assemblies of the people ; the *Honores*, or public offices of the state ; and the *Sacra*, or a participation in the sacred rites of the city : it conferred on them the private rights and obligations of liberty, family, marriage, parental authority, legal property, making a will, succeeding to an inheritance, and tutelage or wardship.

The citizens of Rome were divided into *Patricians* or nobles, and *Plebeians* or inferior persons, and the middle order, called the *Equites*. At an immeasurable distance beneath the *Plebeians*, were the slaves : their masters might set them free, they were then called freed-men ; but, even after they were set free, their masters retained some rights over them.

The Romans were divided into gentes ; their clans into families ; their families into individuals. Each individual had a prænomen which he was distinguished from other men, which denoted his clan ; and a cognomen which denoted his family ; sometimes an agnomen was added, to denote the branch of the gens to which he belonged. Thus, in respect of the name of *Virginius Tricostus Cœlimontanus*,—*Virginius*, the prænomen, denoted the individual ; *Tricostus*, the cognomen, denoted that he was of the *Tricostan* clan ; and *Cœlimontanus*, the agnomen, denoted, that he was of the *Cœlimontan* branch of that family : sometimes a further name was acquired, as *Cunctator* by *Fabius*, and *Imperator* by *Scipio*, in consequence of an illustrious deed.

III. 2. Next to the Citizens of Rome were the Latins, or those who had the *Jus Latium*. Ancient Latium contained the *Albani* and *Æqui* ; it was afterwards extended to the *Osci*, *Ausones*, and *Volsci* : the difference between the right of the city and the right of the Latins is not precisely ascertained : the privilege of the Latins seems to have been, their own laws, and their not being subjects of the *Prætor* : and that they had

sional access to the freedom of Rome, and a participation in her sacred rites.

III. 3. The Italians, or those who had the *Jus Italicum*, followed. All the country, except Latium, between the Tuscan and Hadriatic seas, to the rivers Rubicon and Macra, was, in this sense of the word, called Italy: the Italians had not access to the freedom of Rome, and did not participate in her sacred rites; in other respects, they were nearly on a footing with the Latins.

III. 4. Those countries were called *Provinces*, which the Romans had conquered, or, in any other way, reduced to their power, and which were governed by magistrates, sent from Rome. The foreign towns, which obtained the rights of Roman citizens, were called *Municipia*. The cities or lands, which the Romans were sent to inhabit, were called *Coloniæ*; some consisted of Citizens, some of Latins, and some of Italians, and had therefore different rights.

*Præfecturæ*, were conquered towns, governed by an officer called a Præfect, who was chosen in some instances by the people, in others by the Prætors.

*Civitates Fæderatæ*, were towns in alliance with Rome, and considered to be free. All who were not Citizens, Latins, or Italians, were called

*Peregrini* or foreigners; they enjoyed none of the privileges of Citizens, Latins, or Italians.\*

\* This article is extracted from the first Appendix to *Heineccius's Antiquitatum Romanarum Syntagma*; and *Gracina's work, De Ortu et progressu Juris Civilis*, and his *Liber singularis de Romano Imperio*:—it will be found difficult to mention many works, which a practical lawyer, who wishes to relieve his mind from his professional labours by the perusal of a work of taste, on a subject connected with them, will read with so much pleasure as these three treatises:—and from *Spanheim's Orbis Romanus*.

#### IV.

SUCH were the limits of the Roman empire, and the different classes of Roman subjects:—with respect to its GOVERNMENT AND FORM OF LEGISLATION:

The ROMAN LAW, in the most extensive import of those words, denotes the system of jurisprudence, by which the Roman empire was governed, from its first foundation by Romulus, to its final subversion in the East, in consequence of the taking of Constantinople by Mahomet II. THE CIVIL LAW denotes that part of the Roman Law, which consists of the body of law, compiled by the orders of the Emperor Justinian.

and of the laws subsequently enacted by him, and called his Novells.

The writers on the History of the Roman Law, generally divide it into three æras,—the *Jurisprudentia Antiqua*, *Media*, and *Nova*. The first commences with the foundation of Rome, and extends to the æra of the twelve tables ; the second extends to the reign of the emperor Adrian ; the third to the reign of the emperor Justinian.

IV. 1. *As it was constituted by Romulus*, the Roman government consisted of an elective King ; a Senate or Council, first of one hundred, and afterwards of two hundred nobles ; and a general assembly of the people. The command of the army, the administration of justice, the superintendence of religious concerns, with the office of high priest, belonged to the King ; the Senate deliberated on all public business, and prepared it for the people ; to them, the right of final determination upon it belonged. The number of Senators was successively increased, to three hundred, by Tarquinius Priscus ; to six hundred by Sylla ; to nine hundred by Julius Cæsar ; Augustus reduced it to six hundred. That, during the monarchy, the King had the right of appointing the Senators, is clear : how they were chosen during the æra of the republic, has been the subject of much dispute : some, with M. de Vertot, M. de Beaufort, and Lord

Hervey, contend that, as the Consuls succeeded to the royal power, they enjoyed the royal prerogative of filling up the Senate, till the creation of the Censors, to whom it then devolved: others, with Dr. Middleton, and Dr. Chapman, contend that the Kings, Consuls, and Censors, only acted in these elections, ministerially and subordinately to the supreme will of the people: with whom the proper and absolute power of creating Senators always resided.

The people were divided by Romulus into three Tribes, and each tribe into three *Curiae*. Their public assemblies were called the *Comitia Curiata*: every member had an equal right of voting at them; and the votes were reckoned by the head. Thus, the issue of all deliberations depended on the poor, as they formed the most numerous portion of the community. To remedy this, Servius Tullius, the sixth King, divided the people into six classes, according to a valuation of their estates, and then subdivided the classes into an hundred and ninety-three centuries, and threw ninety-eight of the centuries into the first class: twenty-two, into the second; twenty, into the third; twenty-two, into the fourth; thirty, into the fifth; and the remaining part of the citizens into the sixth. The first class consisted of the richest citizens; the others followed in a proportion of wealth; the sixth consisted wholly of the

poorest citizens. Each century, except the last, was obliged to furnish an hundred men in the time of war; the sixth was exempt from all taxes; and, to compensate this privilege to the rich, Servius enacted that, in the assemblies of the people, they should no longer count the votes by head, but by centuries, and that the first century should have the first vote. This arrangement, while it seemed to give every citizen an equal right of suffrage, as all voted in their respective centuries, virtually gave the richer classes the sole authority: but it was generally acceptable, as it conferred power on the rich, and immunity from taxes and the other burdens of the state, on the poor. These assemblies were called the *Comitia Centuriata*. For some purposes, however, particularly for the choice of inferior magistrates, and, in the time of the republic, for vesting military power in the Dictator, the Consols, and the Prætors, the *Comitia Curiata* continued necessary.

On the expulsion of the last Tarquin, the Senate seems to have been permitted to retain, for some time, the constitutional power, under the regal state, of the monarchs whom they had dethroned: and to have used all means within their reach to perpetuate it in themselves.—During this period, the form of Roman legislation appears to have been, 1st, that the Senate should

convene the Assembly, whether of Curiae, or Centuriæ; 2dly, that the Consul should propound to them the matter to be discussed; 3dly, that the Augur should observe the omens, and declare whether they were favourable or unfavourable;—in the last case the Assembly was dissolved; 4thly, that the Assembly should vote; 5thly, that the Consul should report the resolution of the people to the Senate; and, 6thly, that the Senate should confirm or reject it.

IV. 2. These were the rights of the Consuls, the Senate, and the people, at the commencement of the republic; *several alterations successively took place*, in favour of the people, at the expense of the Consuls and the Senate.

With respect to the *Consuls*, their dignity and power were, by degrees, parcelled out among various magistrates:—thus their power of deciding in civil matters was assigned to the *Pretors*; their power of setting criminal prosecutions on foot was assigned to the *Public Accusers*; the care of the police, to the *Ediles*; their general superintendence of morals and manners, to the *Censors*. After this, little more remained to the *Consuls*, than their right to assemble the Senate, convene the *Comitia*, and command the armies of the republic. The *Consuls* and highest magistrates were chosen by the people: at first, their



choice was confined to the Patrician order; after much contest, it was extended to the people.

The influence of the patricians on the deliberations of the *Comitia Centuriata* was soon thought a grievance by the people: hence, upon every occasion which offered, they endeavoured to bring the business before the *Comitia Curiata*; but with this, they were not satisfied; for, as a patrician magistrate only could preside at the *Comitia Curiata*, and before the Assembly proceeded to business, the omens were to be consulted, and none but Patricians were admitted to the rank of Augur, the *Comitia Curiata*, though in a less degree than the *Comitia Centuriata*, were still subject to Patrician influence. To make the people entirely independent of the Patricians, at their general assemblies, the Tribunes insisted, that the public deliberations should be brought before the assemblies of the tribes, at which every Roman citizen had an equal right to vote, and at which neither the presence of a magistrate, nor the taking of the omens was essential. For this, the Senate and Patricians found it necessary to submit. At first, they contended that they were not bound by the laws passed at these assemblies; but they were soon forced to acknowledge their authority. These assemblies were called *Comitia Tributa*. Some important privileges, however, still re-

mained to the *Senate* : they had the direction of all concerns of religion, the appointment of ambassadors, of governors of the provinces, of the generals and superior officers of the army, the management of the treasury, and, speaking generally, they had the direction of all the religious, civil, and military concerns of the state, subject to the controul of the people, and subject also to the controul of any tribune of the people, who, by his *Veto*, might, at any time, prevent the resolution of the Senate from passing into a decree : but, when the people did not interfere, the *Senatus-Consulta* generally were obeyed ; and it seldom happened that, in matters of weight, the people enacted a law, without the authority of the Senate. Thus the constitutional language of ancient Rome was, that the Senate should decree, and the People order. By the senators themselves, it was deemed an heinous offence, that any of their body, without their leave, should propose a measure to the people : but, in the decline of the Republic, the leading men of Rome and their creatures, paid no attention to this notion, and frequently obtained from the people, what they knew would be refused them by the Senate. The writings of Cicero abound with complaints against this practice. The determination of the people, at the *Comitia Centuriata*, *Comitia Curiata*, or *Comitia Tributa*, was equally

*Lex*, or a Law of the state ; but when it passed in the Comitia Tributa, as it originated with the people, it was called *Plebiscitum* : the decrees of the Senate, were called *Senatus-Consulta*.

IV. 3. *The laws were distinguished*, sometimes by the name of the person who proposed them, as the law *Æmilia* : sometimes, by the names of the Consuls, if they were proposed by both the Consuls, as the law *Papia Poppæa* ; and sometimes, a mention of the nature of the law was added, as the *Lex Fannia Sumptuaria*.<sup>\*</sup>

\* SEE *M. de Beaufort, La Republique Romaine ; Paris, 1767, 6 vol. 8vo. Letters between Lord Hervey and Dr. Middleton concerning the Roman Senate ; London 1778, 4to. and the 12, 13, 14, and 15 Chapters of Montesquieu, l. 11.*

## V.

FOR obtaining an exact view of the HISTORY OF THE ROMAN LAW, it may be divided into nine periods, severally beginning with the following epochs ; 1st, the foundation of Rome ; 2d, the Twelve Tables ; 3d, the abolition of the Decemvirs ; 4th, the reign of Augustus ; 5th, the reign of Hadrian ; 6th, the reign of Constantine the Great ; 7th, the reign of Theodosius the Second ; 8th, the reign of Justinian ; 9th, the reign of his successors, till the fall of the Empire of the East ; and 10th, the revival of the study

of the civil law, in consequence of the discovery of the Pandects at Amalphi. A short view should be had of the principal schools in which the civil law has been taught, and a short account of its influence on the jurisprudence of the modern states of Europe.

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### V. 1.

V. 1. THE FIRST OF THESE PERIODS contains the state of Roman jurisprudence from the foundation of Rome, till the æra of the Twelve Tables. As Rome was a colony from Alba, it is probable that her laws originated in that city. Several of them are actually traced to her first kings; particular mention is made of laws enacted by Romulus, Numa, and Servius Tullius. Historians ascribe to Romulus the primitive laws of the Romans, respecting marriage, the power of the father over his child, and the relation between patron and client: to Numa, their primitive laws respecting property, religion and intercourse with foreign states; to Servius Tullius, their primitive laws respecting contracts and obligations. It is supposed that, in the reign of the last of these kings, a collection of their laws was promulgated

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by public authority. The scanty materials which have reached us, of the regal jurisprudence of Rome, lead to a conjecture that the Romans had attained a high degree of legislative refinement before the abolition of royalty.

Tarquin, the last king of Rome, was expelled in . . . . . 509 245

Not long before or after his expulsion, a body of the Roman law, as it then stood, was collected by Papyrius, and from him was called *Jus Civile Papyrianum*. The president Terasson, in his *Histoire de la Jurisprudence Romaine*, Paris, 1750, in folio, p. 22—73, professes to restore the original of this compilation, as far as the materials which have reached us, allow: he has given us thirty-six laws,—fifteen of them as original texts, and twenty-one as the substance or sense of texts which are lost.

## V. 2.

THE SECOND PERIOD OF THE HISTORY OF THE ROMAN LAW, is the æra of the Twelve Tables.

During the first half century which followed the expulsion of the Tarquins, the civil government of the Romans was in

great confusion : on their expulsion, much of the ancient law was abrogated or fell into disuse, and some new laws were enacted by the Consuls.

The arbitrary and undefined power of the Consuls in framing laws growing very odious, three persons were sent into Greece, and probably to some of the most civilized states of Magna Græcia or Lower Italy, to obtain copies of their laws and civil institutions . . . . .

They returned in the third year after their mission. Ten persons, called from their number Decemvirs, were then appointed to form a code of law for the government of the state, both in private and public concerns. This they effected, and divided their code into ten distinct tables: two were added to them in the following year. They were a mixture of the laws of other nations, and of the old Roman law, adapted to the actual circumstances of the state of the people . . . . .

They were inscribed on twelve tablets of brass ; and, from that circumstance, were called the *Laws of the Twelve Tables*. The twelve tablets were exposed to the view of every person, in a public part of the market place. In the sack of Rome, by the Gauls,

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they perished: immediately after the expulsion of the Gauls, they were restored, and the whole text of them was extant in the time of Justinian: fragments only of them have reached us. Gothofred's edition of these fragments, in his work intituled *Fontes Quatuor Juris Civilis*, Geneva, 1653, in octavo, has obtained the universal applause of the learned: the fragments of them have also been published by the president Terasson; and Pothier has inserted them in his *Pandectæ Justinianæ*, with an interpretation, and an excellent commentary.

The legislative wisdom of the Twelve Tables has been highly praised; but it has been thought, in some instances, immoderately severe. Thus, in respect to an insolvent debtor,—after the debt was proved or admitted, they allowed him thirty days to raise the money, or find surety for its payment: at the end of the thirty days, the law delivered him into the power of his creditor, who might confine him for sixty days in a private prison, with a chain of fifteen pounds weight, on a daily allowance of one pound of rice: during the sixty days, he was to be thrice exposed in the market place, to raise the compassion of his countrymen: at the end of sixty days, if he was sued by a single creditor, the creditor might sell him for a slave beyond the Tyber; if he was sued by several, they might put him to death, and

divide his limbs among them, according to the amount of their several debts. Nothing can be urged in defence of this savage provision, if, as appears to be its true construction, the division, which it directs to be made, is to be understood literally of the body, and not of the price of the debtor: but if, before the Twelve Tables, an insolvent debtor became the slave of the creditor, so that his liberty and life were immediately in the power of the creditor, the ultimate severity of the provisions of the Twelve Tables should be ascribed to the harsh spirit of the people, and the intermediate delays in favour of the debtor should be ascribed to the humane policy of the Decemvirs. It may be added, that about two hundred years afterwards, the Petilian law provided that the goods, and not the body of the debtor, should be liable to his creditor's demands; and that, at a subsequent period, the Julian law provided, in favour of the creditor, the *Cessio Bonorum*, by which the debtor, on making over his property to his creditors, was wholly liberated from their demands. Upon the whole, if we consider the state of society, for which the laws of the Twelve Tables were formed, we shall find reason to admit both their wisdom and their humanity.

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avis into Greece has  
entirely lost. See





*denie*, vol. xii. p. 27, 51, 75; and his doubts have been adopted by Mr. Gibbon; but the fact is either related or alluded to by almost every Roman author, whose works have come down to us: and some writers have professed to track the jurisprudence of Greece, even in the legislative provisions of the Prætors, Consuls, and Emperors.

## V. 3.

V. IN proportion as Rome increased in arms, arts and the number of her citizens, the insufficiency of the laws of the Twelve Tables was felt, and new laws were passed. This insensibly produced, during the remaining part of the period of the republic, which forms **THE THIRD PERIOD OF THE HISTORY OF THE ROMAN LAW**, that immense collection of laws, from which the civil law, as the Justinianean body of law is called, was extracted, and which, on that account, deserves particular consideration.

It was divided, like the law of Greece, into the written and unwritten law. The written comprehended the *Leges*, *Plebiscita*, and *Senatus-Consulta*, which have been mentioned.


The first, and most important branch of the unwritten law of Rome was the *Jus Honorarium*, the principal part of which was the *Edictum Prætoris*. During the regal government of Rome, the administration of justice belonged to

the king ; on the establishment of the republic, it devolved to the Consuls, and from them, to the Prætor. At first, there was but one Prætor ; afterwards, their number was increased to two ; the Prætor Urbanus, who administered justice among citizens only ; and the Prætor Peregrinus, who administered justice between citizens and foreigners, or foreigners only : the number of Prætors was afterwards increased, for the administration of justice in the provinces and colonies. When the Prætor entered on his office he published an edict, or system of rules, according to which he professed to administer justice for that year. In consequence of his often altering his edicts, in the course of the year, laws were passed, which enjoined him not to deviate from the form, which he should prescribe to himself, at the beginning of his office. All magistrates who held the offices, which were ranked among the honours of the state, had the same right of publishing edicts ; and, on this account, that branch of the law, which was composed of the edict of the Prætor, and the edicts of those other magistrates, was called the Jus Honorarium : but the edicts of the Prætor formed by far the most important part of this branch of the Roman law. Such were his rank and authority in Rome, and such the influence of his decisions on Roman jurisprudence, that several writers on the Roman law

mention his edicts in terms, which seem to import that he possessed legislative, as well as judicial power ; and make it difficult to describe with accuracy, what is to be understood by the Prætor's edict. Perhaps the following remarks on this subject will be found of use, and shew an analogy between some parts of the law of which the honorary law of Rome was composed, and some important branches of the law of England.—1st. By the Prætor's edict, as those words apply to the subject now under consideration, civilians do not refer to a particular edict, but use the words to denote that general body of law, to which the edicts of the Prætors gave rise.—2dly, It is to be observed, that the legislative acts of any state, form a very small proportion of its laws : a much greater proportion of them consists of that explanation of the general body of the national law, which is to be collected from the decisions of its courts of judicature, and which has, therefore, the appearance of being framed by the courts. A considerable part of the law, distinguished by the name of the Prætor's edict, was of the last kind ; and, as it was a consequence of his decisions, received the general name of his law. In this respect, the legal policy of England is not unlike that of Rome ; for, voluminous as is the statute book of England, the mass of law it contains bears no proportion

to that, which lies scattered in the volumes of reports, which fill the shelves of an English lawyer's library: and perhaps it would be difficult to find, in any edict of a Prætor, a more direct contradiction of the established law of the land, than the decisions of the English judges, which, in direct opposition to the spirit and language of the statute de donis, supported the effect of common recoveries in barring estates tail.—

3dly. Experience shews, that the provisions of law, on account of the general terms, in which they are expressed, or the generality of the subjects to which they are applicable, have frequently an injurious operation in particular cases, and that circumstances frequently arise, for which the law has made no provision. To remedy these inconveniences, the courts of judicature of most countries, which have attained a certain degree of political refinement, have assumed to themselves a right of administering justice in particular instances, by certain equitable principles, which they think more likely to answer the general ends of justice, than a rigid adherence to law; and, where law is silent, to supply its defects by provisions of their own. These privileges were allowed the Prætor by the law of Rome: in virtue of them, he pronounced decrees, the general object of which had sometimes a corrective, and sometimes a suppletory opera-



tion on the subsisting laws. They were innovations: but it may be questioned, whether any part of the Prætor's law was a greater innovation on the subsisting jurisprudence of the country, than the decisions of English courts of equity on the statute of frauds.—4thly, The laws of every country allow its courts a considerable degree of power and discretion in regulating the forms of their proceedings, and carrying them into effect; further than this, the Prætor's power of publishing an edict, signifying the rules by which he intended the proceedings of his courts should be directed, does not appear to have extended.—These observations may serve to explain the nature of the Prætor's jurisdiction, and to shew that the exercise of his judicial authority was not so extravagant or irregular as it has sometimes been described.<sup>4</sup>

2. A second source of the unwritten law of Rome was, the *Actiones Legis*, and *Solemnes Legum Formulæ*, or the Actions at Law, and Forms of Forensic proceedings, and of transacting legal acts. These, for some time, were kept a profound secret by the Patricians; but, Appius Claudius having made a collection of them for his private use, it was published by Cnæus Flavius, his secretary. The Patricians then devised

SEE APPENDIX, NOTE III.

new forms, and those were made public by Sextus Ælius. These publications were called the Flavian and Ælian Collections ; all we have of them is to be found in Brisson's celebrated work, *De Formulæ et Solemnibus Populi Romani Verbis*.

3. A third source of the unwritten law of Rome was derived from the *Disputationes Fori*, and the *Responsa Prudentum*. Mention has been made of the relation introduced by Romulus between patron and client ; — to give his client legal advice was among the duties of the patron ; insensibly, it became a general practice, that those, who wanted legal assistance, should apply for it to the persons of whose legal skill they had the greatest opinion. This was the origin of the Jurisconsulti or Civilians of Rome : they were, generally, of the Patrician order ; and, from succeeding to this branch of the duty of patronage, received the name of patrons, while those, by whom they were consulted, were called clients. The patron received his client with a solemnity bordering on magisterial dignity ; and generally delivered, in a few words, his opinion on the case which was submitted to his consideration ; but he sometimes accompanied it with his reasons. These consultations usually took place at an early hour in the morning : the broken slumbers of the Civilians are mentioned by every Roman poet whose muse has led him to describe

the inconveniences which attend distinction and fame. Legal topics were often subjects of the conversations of Civilians ; and the forum, from their frequent resort to it, being the usual scene of these friendly disputations, gave its name to them. They also published treatises on legal subjects. Their opinions and legal doctrines were highly respected ; but, till they were ratified by a judicial decision, they had no other weight than what they derived from the degree of public estimation, in which the persons who delivered them were held. The Civilians are commonly divided into three classes ; those, who flourished between the æra of the Twelve Tables, and the age of Cicero ; those who flourished from the age of Cicero, to the reign of Severus Alexander ; and those who flourished from the beginning of his reign, to that of the Emperor Justinian. The second, is the golden period of Antejustinianean jurisprudence. From the fragments which have reached us, of the works of the Civilians who flourished during that period, modern writers have thought themselves justified in describing them as men of enlarged minds, highly cultivated understandings, and great modesty.— In their judicial studies they availed themselves of the learning and philosophy of the Greeks, carried the disputes of the schools of Athens into the Forum ; and, early in the period of

which we are speaking, branched into two sects; whose opposite tenets were founded on principles, not unlike those, which gave rise to the distinctive doctrines of the disciples of Zeno and Epicurus. Antistius Labeo was the founder of the former sect; Ateius Capito of the latter: from Proculus and Pegasus, two eminent followers of Labeo, the former were called Proculians or Pegasians; from Masurius Sabinus and Casius Longinus, two eminent followers of Capito, the latter were called Sabinians or Cassians. The former contended for a strict adherence to the letter and forms of the law; the latter for a benign interpretation of it, and for allowing great latitude in the observance of its forms. Attempts were made to compromise the difference between them: they gave rise to a third sect, the Jurisconsulti Erisiciundi, or Miscalliones. Something of the difference which subsisted between the disciples of Labeo and Capito, has long subsisted in the jurisprudence of England; but the good sense of the English bar has prevented the maintainers of the different opinions from forming themselves into sects. Till the reign of Augustus every person was at liberty to deliver judicial opinions; Augustus confined this privilege to particular persons, with a view, it is supposed, of their propagating those doctrines of law, which were favourable to his political system:



Emperor Adrian restored the general  
 : the Emperor Severus Alexander  
 d it the limits within which it had  
 rcumscribed by Augustus.  
 se are the materials of which the  
 and unwritten law of Rome was  
 ally formed.

## V. 4.

THE FOURTH PERIOD OF THE  
 DRY OF THE ROMAN LAW,

which fills the space between the  
 when Julius Cæsar was made perpe-  
 ctator, and the reign of the Emperor 46 708

. The power of Julius Cæsar, in  
 uence of his perpetual dictatorship,  
 him above law; but it does not ap-  
 at he made many innovations, of a  
 nature, in the Roman jurisper-

That was left to Augustus, his  
 id successor. At different periods  
 reign, the people conferred on Au-  
 the various titles of Perpetual Tri-  
 Consul, Proconsul, Censor, Augur,  
 ligh Priest: thus, in effect, he ac-  
 both the civil and military power of  
 te: but, as he professed to exercise  
 irtue of those offices, his acts had  
 pearance of being the acts of the

different magistrates, whose offices had been conferred on him. Finally, in the year of the city, 735, power was given him to amend or make whatever laws he should think proper. This was the completion of the Lex Regia, or of those successive laws, which, while they permitted much of the outward form of the republic to remain, invested the emperor with absolute power.

During the whole of Augustus's reign, the forms of the *Leges* and *Senatus-consulta*, those vestiges of dying liberty, as they are called by Tacitus, were preserved.

For the Senate, Augustus uniformly professed the greatest deference ; he attended their meetings, seemed to encourage their free discussion of every subject, which came before them ; and, when a law was approved of by them, he permitted it, agreeably to the ancient forms of the republic, to be referred to the people. The reference of laws to the people was abolished by Tiberius ; so that, from his time, the laws of Rome originated and were completed in the senate. At first their deliberations had an appearance of free discussion ; by degrees, even that vanished, and insensibly the Senate served for little more than a nominal council of the

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Emperor, an office to register his ordinances, and a court of judicature for great public causes.

## V. 5.

THIS memorable revolution in the functions of the Senate, with which even the forms of Roman liberty expired, must be dated from the Emperor Adrian, and forms the FIFTH PERIOD OF THE HISTORY OF THE ROMAN LAW. . He was the first of the Emperors who exercised, without disguise, the plenitude of legislative power. With him, therefore, the *Imperial Constitutions*, under the various names of Rescripta, Epistolæ, Decreta, Edicta, Pragmaticæ Sanctiones, Orationes and Annotationes, originated; they had the force of law in every part of the Roman state. Under his reign, Julian, a lawyer of great eminence, digested the prætor's edicts, and other parts of the Jus Honorarium, into a regular system of law, in fifty books. This compilation was much esteemed; was referred to as authority, and obtained the name of *Edictum Perpetuum*; all the remains of which have come down to us, are the extracts of it in the digest; they have been collected with great attention, by Simon Van Leeuwen, the head of the Digest, in his edition of

Gothofred's *Corpus Juris Civilis*, Lugd. <sup>After</sup> ~~crus.~~  
Batav. 1663. . . . . 190

It was a remarkable effect of the *Edictum Perpetuum*, to put an end to the legal schism of the Sabinians and Proculians. By countenancing the former, in the *Edictum Perpetuum*, the Emperor Adrian terminated the dispute.

After this came the *Coder Gregorianus*; a collection of Imperial constitutions, from Adrian to Dioclesian, by Gregorius or Gregorianus, Prætorian Præfect to Constantine the Great . . . . . 264

This was succeeded by the *Coder Hermogenianus*, a continuation of the former code, by Hermogenes, a contemporary of Gregorius or Gregorianus,

## V. 6.

THE SIXTH PERIOD OF THE ROMAN LAW extends from the reign of Constantine the Great to that of the Emperor Theodosius the Second. It is particularly remarkable for having furnished many new articles of great importance to the jurisprudence of Rome . . . . . 306

They chiefly arose from the foundation of Constantinople, the new forms of civil and

military government introduced by Constantine, the legal establishment of Christianity, and the division of the empire between the sons of Theodosius the Great. To the first may be referred numerous laws, respecting the privileges and police of the imperial city ; to the second, an abundance of legal provisions, respecting the various officers of the empire, and the ceremonial of the Byzantine court; to the third, a succession of imperial edicts, by which Christianity was first tolerated, then legalized, and afterwards became the established religion of the state. After Christ.

The division of the empire between the sons of Theodosius, in 395, was attended with still more important effects on Roman jurisprudence. . . . . 395

### V. 7.

THE variety of laws, principally occasioned by the circumstances which have been mentioned, introduced a considerable degree of confusion into the Roman jurisprudence. To remedy it, Theodosius the second, the Emperor of the East, published, in 438, the celebrated code of law, named from him the *Theodosian Code*, which is THE SEVENTH PERIOD OF

**THE HISTORY OF THE ROMAN LAW.** <sup>After Christ.</sup> It comprises all the imperial constitutions from 312, the year in which Constantine was supposed to have embraced Christianity, to the time of its publication. 438 It has not reached us entire : an excellent edition of the remains of it was published by James Gothofred, at Lyons, in 1668, in six volumes folio, generally bound in four. It is accompanied with Prolegomena, introductory chapters, a perpetual commentary and notes ; the labour of thirty years ; and no one, as Doctor Jortin justly remarks, ever thought the time thrown away. No work perhaps can be mentioned, which contains more information on the antiquities of the early ages of the lower empire. In addition to the Theodosian Code, it comprises the subsequent novells of the Emperors Valentinian, Martian, Majorian, Severus and Anthemius.

Immediately after the publication of the Theodosian Code in the eastern empire, it was received into the empire of the west, by an edict of Valentinian the Third. In the east, it retained its force, till it was superseded by the Justinianean collection.

It retained, but indirectly, its authority longer in the west. The Barbarians, who



invaded the empire, permitted the Romans to retain the use of their laws. In 506 After  
Christ.  
506 Alaric, king of the Visigoths in Gaul, ordered a legal code to be prepared, in which the Roman and Gothic laws and usages should be formed into one body of law, for the general use of all his subjects; this was accordingly done in the twenty-second year of his reign; and from Anianus, his Referendary, or Chancellor, by whom it was either compiled or published, it was called the *Breviarium Aniani*. It is an extract from the Gregorian, Hermogemian, and Theodosian Codes, the novells of the subsequent Emperors, the sentences of Paulus, the Institutes of Gaius, and the works of Papinian. It superseded the use of the former laws so far, that, in a short time, they ceased to be cited in the courts, or by writers on subjects of law; and Anianus's collection, under the name of the Roman or Theodosian law, became the only legal work of authority<sup>a</sup>.

To this period also, must be ascribed the celebrated *Collatio Mosaicarum et Romanarum Legum*: the object of it is to shew the

<sup>a</sup> SEE the learned *Prolegomena ad Codicem Theodosianum* of Gothofred.

resemblance between the Mosaical institutions and the Roman law ; the best edition of it is F. Desmare's in 1689. AD  
Christ.

V. 8.

**THE EIGHTH, AND MOST IMPORTANT, PERIOD.** of the history of the Roman law, comprises the time in which the body of law, compiled by the direction of the Emperor Justinian, was framed.

1. By his order, Trebonian, and nine other persons of distinction, in the first year of his reign, made a collection of the most useful laws, in the Codex Theodosianus, the two earlier codes of Gregorius and Hermogenes, and the constitutions of some succeeding emperors. It was immediately published by Justinian, and is called the *Codex Justinianus Primæ Prælectionis* . . . . . 528

2. But his great work is his *Digest or Pandects*. By his direction, Trebonian, with the assistance of sixteen persons, eminent either as magistrates or professors of law, extracted from the works of the five civilians, a complete system of law, it consists of fifty books. . . . . 529  
its publication, an ele-



mentary treatise, comprising the general <sup>After Christ.</sup> principles of the system of jurisprudence, contained in it, was promulgated, by the Emperor's direction, in four books. From its contents, it was called *The Institutes*.

Thus the Digest and Institutes were formed into a body of law, by the authority of the Emperor. He addressed them, as imperial laws, to his tribunals of justice, and to all the academies, where the science of jurisprudence was taught: they were to supersede all other law, and to be the only legitimate system of jurisprudence throughout the empire.

4. In the following year, he published a corrected edition of the code, under the title *Codex Repetitæ Prelectionis*.— This wholly superseded the first code; and, except so far as it has been preserved in the latter, it is wholly lost.

5. The edicts which he promulgated, after the new edition of the Codex, were collected into one volume, in the last year of his reign, and published under the name of *Novellæ*.

6. Most of the *Novellæ* were written in the Greek language. In the last year of Justinian's life, a Latin translation was made of them; and, by the fidelity with

bles, the Tituli of Ulpian, and the opinions of Paulus, with notes, and copious indexes to the whole<sup>m</sup>.

- <sup>m</sup> THIS article is extracted from *Pomponius's short treatise de Origine Juris et omnium magistratuum et successione prudentum, Dig. Tit. 2; the Preface to the Institutes; the first, second, and third Prefaces to the Pandects; the first and second Prefaces to the Code; Heineccius's Historia Juris Civilis Romani ac Germanici, Lug. Bat. 1740, 8vo. the Antiquitatum Romanarum Syntagma, of the same author, Strasburgh 1724, 8vo.*—The writings of Heineccius are a striking proof of the truth of Mr. Gibbon's observation, vol. 4. 395, note 160, "that the universities of Holland and Brandenburgh, in the beginning of the last century, appear to have studied the civil law on the most just and liberal principles:"—*the works of Gravina, on the Civil Law, Leipsiæ 1717, in three volumes 4to. particularly his Origines Juris Civilis; Gravina's account of the Leges and Senatus Consulta is particularly interesting; Brunquellus's Historia Juris Romano-Germanici, Ams. 1730, 8vo. perhaps the completest historical account extant of the civil law; Struvius's Historia Juris Romani, Jenæ, 1718, 4to. Pothier's Prolegomena to his Pandectæ Justinianæ, Lyons, 3 vols. fol. Terasson's Histoire de la Jurisprudence Romaine, Paris, 1750, said by Mr. Gibbon, 4th vol. note 9, to be "a work of more promise than performance;"*

## VI.

THESE lead to an inquiry respecting THE PRINCIPAL SCHOOLS, IN WHICH THE CIVIL LAW HAS BEEN TAUGHT since its revival in Europe.

*Thomasius's Delineatio Historiæ Juris Romani et Germanici, Erfordiæ, 1750, 8vo. and his Novorum Jurisprudentiæ Romanæ Libri duo, Halæ Magdeburgicæ, 1707, 8vo.*—they contain a severe attack on the Justinianean collection, the emperor, and all other persons concerned in it: *Montesquieu's Esprit des Loix*, a work entitled to all the praise it has received; no one, who has not travelled through the Corpus Juris and the Capitularies, can form an idea of the comprehensive brevity and energy with which it is written. *Dr. Berer's History of the Legal Polity of the Roman State, Lond. 1781, 4to. Dr. Taylor's Elements of the Civil Law, Camb. 1755, 4to.* a work, if we acquiesce in Mr. Gibbon's opinion of it, 4th vol. note 132, “ of amusing, though “ various reading; but which cannot be praised “ for philosophical precision;” *The four Books of Justinian, translated by the late Dr. Harris, with notes and a preface; the translation is excellent, and it is much to be lamented, that the preface is not longer, and the notes more copious; Ferriere's Histoire du Droit Romaine, Paris, 1788, 8vo. Beaufort's Republique Romaine,*

In the early days of the republic, it was usual for such as desired to gain a knowledge of the laws of their country, to attend on those, who were consulted on legal subjects, at the hours, in which these consultations generally took place. Tiberius Coruncanius is said, by Cicero, to have been the first among the Romans, who professed to give regular instructions on legal subjects. Afterwards, public schools of jurisprudence were established; the most celebrated were those at Rome and Constantinople; Justinian founded a third at Berytus, and used all means in his power, to promote its success: he gave the professors large salaries, and advanced some of them to offices of high distinction in the state;—as the authority of his law decreased, they fell into decay.

With the discovery of the Pandects at Amalphi, the study of the civil law revived:—it was introduced into several universities, and exercises were performed, lectures read, and degrees conferred in this, as in other branches of science, and several

*Paris, 1767, 6 vols. 8vo. an excellent constitutional History of the Roman Government:—The 44th Chapter of the 4th Volume of Mr. Gibbon's History; M. Bouchaud's Recherches Historiques sur les Edits des Magistrats Romains, Quatrieme Memoire, Mem. de l'Academie, 41st Vol. p. 1, and Mr. Schomberg's Elements of Roman Law, London, 1786, 8vo.*

nations of the continent, adopted it, as the basis of their several constitutions. From this time, there has been a regular succession of civil lawyers, distinguished by some circumstance or other into different classes, or as it is usually expressed, into different schools.

1. The first, is *the school of Irnerius*, a learned German, who had acquired his knowledge of the civil law, at Constantinople. He taught it at Bologna, with great applause: the legal schism which had divided the Sabinians and Proculians, was revived, in some degree, among his scholars: one of them, was the celebrated Azo, a Proculian, whose writings, Montesquieu is said to have preferred to all other on the subject of civil law. A more important subject, the contest between the emperors and popes, produced a more serious warfare between the disciples of Irnerius. The German emperors, who pretended to succeed to the empire of the Cæsars, claimed the same extent of empire in the west, and with the same privileges, as it had been held by the Cæsars; to this claim, the spirit and language of the civil law being highly favourable, the emperors encouraged the civilians; and, in return for it, had their pens at command. The popes were supported by the canonists, and the canonists found, in the decree of Gratian, as much to favour the pretensions of the popes, as the civilians found,

in the law of Justinian, to favour the pretensions of the emperors. Thus, generally speaking, the civilians were Ghibelins, the name given to the partisans of the emperors, and the canonists were Guelphs, the name given to the partisans of the popes. But this distinction did not prevail so far, as to prevent many canonists from being Ghibelins, or many civilians from being Guelphs; those among the civilians, who sided with the canonists in these disputes, were called from the decree of Gratian, *Decretistæ*, in opposition to the rest of the body, who assumed the appellation of *Legistæ*, from their adherence to the supposed Ghibelin doctrines of the civil law.

2. *A new school began with Accursius*:—his Gloss is a perpetual commentary on the text of Justinian: it was once considered as legal authority, and was therefore usually published with the text:—it is even now respected as an useful commentary. Accursius had many disciples, whose glosses had great celebrity in their day, but are now wholly forgotten.

3. *Bartolus, and Baldus his disciple and rival, gave rise to a new school*, famous for copious commentaries on Justinian's text; for the idle subtleties with which they abound, and their barbarous style.

4. Andrew Alciat was the first who united the study of polite learning and antiquity, with the

study of the civil law : he was the founder of a *new school which is called the Cujacian* from Cujas, the glory of civilians. Of him, it may be said truly, that he found the civil law of wood, left it of marble. That school has subsisted to the present time ; it has never been without writers of the greatest taste, judgment and erudition ; the names of Cujacius, Augustinus, the Gothofredi, Heineccius, Voetius, Gravina, and Pothier, are as dear to the scholar, as they are to the lawyer. An Englishman however, must reflect with pleasure, that his countryman, Mr. Justice Blackstone's Commentaries on the Laws of England, will not suffer in a comparison with any foreign work of jurisprudence :—perhaps it will be difficult to name one of the same nature, which will bear a comparison with it.\*

\* This article is chiefly taken from the cited works of *Gravina* and *Brunquellus*.

## VII.

It remains to give some account of **THE INFLUENCE OF THE CIVIL LAW ON THE JURISPRUDENCE OF THE MODERN STATES OF EUROPE.**

On the degree of its influence on ~~the law of~~ Germany, the German lawyers are not agreed ; but it is a mere dispute of words ; all of them

allow that more causes are decided in their courts, by the rules of the civil law, than by the laws of Germany ; and that, where the laws of Germany do not interfere, the subject in dispute must be tried by the civil law ; after these concessions, it is not material to inquire, whether, to use the language of the German lawyers, the civil law be the dominant law of Germany, or subsidiary to it.

The same may be said of its influence in Bohemia, Hungary, Poland and Scotland.

At Rome, and in all the territories of the pope, it is received without limitation ; in most other parts of Italy, including Naples and the two Sicilies, it has nearly the same influence ; except where the feudal policy intervenes.

Its influence in Spain and Portugal is more qualified ; but it appears to be admitted, that where the law of the country does not provide the contrary, the civil law shall decide : and it is the settled practice, that no person shall be appointed a judge or received an advocate in any of the courts of law, who has not been a student in some academy of civil or canon law for ten years.

The provinces of France, which lie nearest to Italy, were the first conquered by the Romans, and the last conquered by the Franks. At the time of the conquest of them by the Franks, they were wholly governed by the Roman law :



they are the provinces of Guyenne, Provence, Dauphiné, and speaking generally, all the provinces, under the jurisdiction of Toulouse, Bordeaux, Grenoble, Aix, and Pau ; the Lyonnais, Forez, Beaujolois, and a great part of Auvergne. Their Francic conquerors permitted them to retain the Roman law ; where it has not been altered, they are still governed by it : and, from this circumstance, they are known under the general name of the Pays du Droit Ecrit. The remaining part of France is governed by the different laws and customs of the provinces of which it is composed, and from this circumstance, is called, Pays Coutumier.

The Venetians have always disclaimed the authority of the civil law.

It was introduced into England by Theobald, a Norman Abbot, who was elected to the see of Canterbury. He placed Roger, surnamed Vacarius, in the university of Oxford :—students flocked to him in such abundance, as to excite the jealousy of government, and the study of the civil law was prohibited by King Stephen. It continued, however, to be encouraged by the clergy, and became so favourite a pursuit, that almost all, who aspired to the high offices of church or state, thought it necessary to go through a regular course of civil law, to qualify themselves for them :—it became a matter of reproach

to the clergy, that they quitted the canon for the civil law ; and pope Innocent prohibited the very reading of it by them. Notwithstanding this opposition, the study of the civil law has been encouraged in this country :—in each of our universities there is a professor of civil law, and, by general custom and immemorial usage, some of the institutions of the civil law have been received into our national law. In the spiritual courts, in the courts of both the universities, the military courts, and courts of admiralty, the rules of civil law, and its form of legal proceeding greatly prevail. But the courts of common law have a superintendency over these courts, and from all of them, an appeal lies to the King in the last resort. “ From these strong marks  
“ and ensigns of superintendency it appears be-  
“ yond doubt,” says Mr. Justice Blackstone,  
“ that the civil and canon laws, though ad-  
“ mitted in some cases by custom, and in some  
“ courts, are only subordinate and *lege sub gra-  
“ viore lege.*”—The short but very learned treatise of Arthur Duck, *de Usu et Auctoritate juris civilis in Dominiis principum christianorum*, conveys, in elegant language and a pleasing manner, complete information on the nature and extent of the influence of the civil law, on the jurisprudence of the modern states of Europe.

# THE FEUDAL LAW.

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**AN attempt will be made in the following sheets to give some account, I. Of the original territories of the nations by whom THE FEUDAL LAW was established; II. Of their first progress and chief settlements in the Roman territories; and III. Of the principal written documents of the Feudal Jurisprudence of foreign countries. It is principally taken from a note of the Editor, in that part of the 14th edition of Coke upon Littleton, which was executed by him. That note contains also some observations on the peculiar marks and qualities of the feudal law; some account of the principal events in the early history of the feuds of foreign countries; and of the revolutions of the feud in England. But, as the researches which gave rise to that note were chiefly made with a view to the law of real property, the observations in it are principally directed, through every branch of the inquiry, to the influence of the feud on *that species***

of property, particularly where the writer treats of the feudal jurisprudence of England. Under that head some general observations are offered, on the time when feuds may be supposed to have been first established in England: on the fruits and incidents of the feudal tenure; and on the feudal polity of this country, with respect to the inheritance and alienation of land: under this head an attempt is made to state the principal points of difference between the Roman and feudal jurisprudence in the articles of heirship, the order of succession, and the nature of feudal estate; an attempt is then made to shew the means by which some of the general restraints upon the alienation of real property, introduced by the feud, have been removed; some account is then given of entails, and of the means by which the restraints created by entails were eluded or removed. Having thus treated of that species of alienation, which, being the act of the party himself, is termed voluntary alienation, notice is taken of that species of alienation, which, being forced on the party, is termed involuntary.— Under that head are briefly considered the attachment of lands for debt; first, in regard to its effect upon them, while they continue in the possession of the party himself; then, in respect to its effect upon them, when in possession of the heir or devisee; and afterwards, in respect to

the prerogative remedies for the recovery of Crown debts. Some observations are then offered on testamentary alienation : and an account of some of the principal circumstances in the history of the decline and fall of the feud in England.

## I.

In respect to the *ORIGINAL TERRITORIES* of the nations who introduced the feudal law :—they may be considered under the names of Scythians, Sarmatians, Scandinavians, Germans, Huns and Slavonians, which they acquired as they extended their conquests. Till lately, the inhabitants of the shores of the Baltic were considered to be their parent stock : subsequent researches seem to have traced it to the spot where the common stock of all nations is found,—the Plain of Sennaar.

I. I. For the early state of the Northern nations we must look to Herodotus. Of the north-western parts of Europe, he seems to have had little knowledge : the word Germany does not occur in his writings : *Scythia* is a general name given by him to the north-eastern parts of Europe, and to all he knew of the north-western parts of Asia, till he reached the Issedones, a nation who, by Major Rennel's account, occupied the present seat of the Oigur or Eluth Tartars.

The Eur            t of this extensive territory

lies on the western, its Asiatic part on the eastern side of the Volga. On the south, the European Scythia extended to the Carpathian mountains and the mouths of the Danube; and the Asiatic Scythia to the Caspian and the country on its east. As it was intersected by the great chain of mountains called the Imaus or Caff, the Asiatic Scythia was distinguished into the Scythia within, and the Scythia without the Imaus.

I. 2. Under the general denomination of *Celts*, Herodotus included all the parts of Europe which were not occupied by the Scythians.

I. 3. In the course of time, the name of Scythia was applied to the eastern part only of the original Scythia; but the division of it into the part within and the part without the Imaus was preserved; the western Scythia, or the part of the original Scythia, which lies on the western side of the Volga, then received the name of *Sarmatia*, and was divided into the European and Asiatic Sarmatia; the former contained the country between the Vistula and the Tanais or Don, the latter extended from the Tanais to the Volga.

I. 4. Of the countries on the north of the Baltic, Herodotus seems to have known nothing; to the Romans they were known by the name of *Scandinavia*.

I. 5. The tribes who occupied the country

between the Baltic and the Danube, the Rhine, and the Vistula, were equally unknown to Herodotus ; to the Romans they were known by the name of *Germans*.

I. 6. At a very early period, a division of Scythians had advanced to the eastern shore of the central part of Asia, and established themselves in the present country of the Mongous : by the Chinese writers, they are called Hiongnous, by the Romans, to whom they were long unknown, they are called *Huns*.

I. 7. At a later period several tribes of these nations spread themselves over different territories, in the European and Asiatic parts of Modern Russia, and over Bohemia, Poland, Servia, Bosnia, Croatia and Slavonia : by the historians of the fall of the Roman empire, they are called *Slavi* or *Slavones*.<sup>a</sup>

<sup>a</sup> Major Rennel's *Geographical System of Herodotus*, Lond. 4to. 1803; D'Anville, *États formés en Europe après la chute de l'empire Romain*, 4to. Paris, 1771; and his *Geographie ancienne abrégée*, Paris, 3 vol. 8vo. 1768. Cellarius, *Geographia Antiqua*, Lipsiæ, 8 vol. 4to. 1738: — *Observations Historiques et Géographiques sur les peuples barbares qui ont habité les bords du Danube & du Pont Euxin*. Par M. de Peyssonnet, Paris, 4to. 1765. *Modern Universal History*, vol. 4, p. 313—379, and Mr. Pinkerton's

## II.

THE GRADUAL EXTENSION AND  
 ATES OF THE PRINCIPAL CON-  
 UESTS MADE BY THESE NATIONS  
 xt come under consideration.

In the reign of Augustus they were powerful  
 emies to the Romans; they had not, however,

*Dissertation on the Origin and Progress of the  
 Scythians or Goths, 8vo. 1787.* Some of his  
 facts, arguments or conclusions, may be denied,  
 but neither his learning nor his ingenuity can  
 be disputed.—There is not, perhaps, in geogra-  
 phy, a word, which denotes so large a surface of  
 the globe as Slavonia, in its largest sense; or  
 which, as it is variously applied, denotes so  
 many portions of general territory. 1. In its  
 least extensive sense, it denotes the modern Sla-  
 vonia, or the country between Croatia and Bel-  
 grade, bounded by the Drave and the Danube  
 on the north, and the Save on the south: 2. In  
 a more extensive sense, it denotes the country  
 between the Hadriatic and the Danube, and the  
 countries between the Vistula, the Carpathian  
 mountains, the Nieper and the Black sea; 3. In  
 a more extensive sense, it extends to the Ir-  
 tish: 4. That seems the utmost boundary on the east,  
 which can justly be assigned to it, but some au-  
 thors suppose the whole northern front of Asia  
 is filled by Slavonic tribes.



narian wood, on the confines of Brabant and Hainault. It was probably written in the Latin language, about the beginning of the fifth century, by Wisogastus, Bodogastus, Salogastus and Windogastus, the chiefs of the nation. It received considerable additions from Clovis, Childebert, Clotaire, Charlemagne, and Lewis the Debonnaire. There are two editions of it: they differ so considerably, that they have been sometimes treated as distinct codes.

2. The Franks, who occupied the country upon the Rhine, the Meuse, and the Scheldt, were known by the name of the Ripuarians, and were governed by a collection of laws, which from them was called the *Ripuarian Law*. They seem to have been first promulgated by Theodoric, and to have been augmented by Dagobert. The punishments inflicted by the Ripuarian are more severe than the punishments inflicted by the Salic law; and the Ripuarian law mentions the trial by judgment of God, and by duel.

Theodoric also appears to have first promulgated the law of the *Almanni*, a people, who came originally from the country, near the sources of the Danube; and who, some time before the reign of the emperor Caracalla, incorporated themselves with the Suevi of Tacitus. They were joined by other German tribes, and from their union, the general body of them acquired the

appellation of Alemanni, from two Teutonic words, Al, and mann, which signify, a multitude of persons. The country inhabited by them was called Alemannia. A supposed line from Spire to Ratisbon divided it from the Francia Orientalis, on the north; it was bounded by the Rhine, on the west, by the Lech on the east, and by the country between Bâle, and the sources of Lech, on the east. It nearly corresponded with the Roman Alemannia, and the modern Circle of Suabia.

3. *The law of the Burgundians* is supposed to have been promulgated about the beginning of the fifth century; that nation occupied the country which extends itself from Alsace to the Mediterranean, between the Rhone, and the Alps. This was the most flourishing of the Gallic provinces invaded by the Germans; they established themselves in it, with the consent of the emperor Honorius. An alliance subsisted a considerable time, between them and the Romans; and some parts of their law appear to be taken from the Roman law.

4. One of the most ancient of the German codes is that by which the *Angliques* and the *West-Saxons* were governed. The territories of these nations were contiguous to those of the Saxons; and the Angliques are generally supposed to be the

nation known in our history by the name of Angles.

A considerable portion of the *Law of the Saxons* has reached us.

The Goths also had their laws, which were promulgated by the Ostrogoths in Italy ; by the Visigoths in Spain.

5. The Goths were dispossessed of their conquests in Italy by the Lombards. No ancient code of law is more famous than *the law of the Lombards* : none discovers more evident traces of the feudal polity. It survived the destruction of that empire by Charlemagne, and is said to be in force even now, in some cities of Italy.

These were the principal laws, which the foreign nations, from whom the modern governments of Europe date their origin, first established in the countries, in which they formed their respective settlements. Some degree of analogy may be discovered between them and the general customs, which, from the accounts of Cæsar and Tacitus, we learn to have prevailed among them, in their supposed aboriginal state. A considerable part also of them is evidently borrowed from the Roman law, by which, in this instance, we must understand the Theodosian code. This was the more natural, as, notwithstanding the publication of the Ripuarian and Salic codes, the Roman subjects in Gaul were indulged in the

free use of the Theodosian laws, especially in the cases of marriage, inheritance, and other important transactions of private life. In their establishments of magistrates and civil tribunals, an imitation of the Roman polity is discoverable among the Franks; and, for a considerable time after their first conquests, frequent instances are to be found, in their history, of a deference, and, in some instances, even of an acknowledgment of territorial submission to the emperors of Rome.

## III. 2.

In the course of time, all these laws were, in some measure at least, superseded by the **CAPITULARIES**. The word Capitulary is generic; and denotes every kind of literary composition, divided into chapters.—Laws of this description were promulgated by Childebert, Clotaire, Carloman, and Pepin: but no sovereign seems to have promulgated so many of them as Charlemagne. That monarch appears to have wished to effect, in a certain degree, an uniformity of law throughout his extensive dominions. With this view, it is supposed, he added many laws, divided into small chapters or heads; to the existing codes, sometimes to explain, sometimes to amend, and sometimes to reconcile or remove the difference between them. They were gene-

rally promulgated, in public assemblies, composed of the sovereign and the chief men of the nations, as well ecclesiastics as secular. They regulated, equally, the spiritual and temporal administration of the kingdom. The execution of them was intrusted to the bishops, the counts, and the *missi regii*. Many copies of them were made, one of which was generally preserved in the royal archives. The authority of the Capitularies was very extensive; it prevailed in every kingdom, under the dominion of the Franks, and was submitted to in many parts of Italy and Germany.

The earliest collection of the Capitularies is that of Angersise, abbot of Fontenelles. It was adopted by Lewis the Debonnaire and Charles the Bald, and was publicly approved of, in many councils of France and Germany. But, as Angersise had omitted many Capitularies in his collection, Benedict, the Levite or Deacon of the church of Mentz, added three books to them. Each of the collections was considered to be authentic, and of course appealed to as law. Subsequent additions have been made to them. The best edition of them is that of Baluze in 1697: a splendid republication of this edition was begun by M. de Chiniac in 1780; he intended to comprise it in four volumes. Two only have yet made their appearance.



In the collection of ancient laws, the capitularies are generally followed by the *Formularia*, or forms of forensic proceedings and legal instruments. Of these, the formulare of Marculphus is the most curious. The formularia generally close the collections of ancient laws. With the Merovingian race, the Salic, Burgundian and Visigothic laws expired. The capitularies remained in force in Italy longer than in Germany; and in France, longer than in Italy. The incursions of the Normans, the intestine confusion and weakness of government under the successors of Charlemagnê, and, above all, the publication of the Decretum of Gratian, which totally superseded them in all religious concerns, put an end to their authority in France.

### III. 3.

They were in some measure succeeded by the **CUSTOMARY LAW.**

1. It is not to be supposed, that the codes of law, of which we have been speaking, entirely abrogated the usages or customs of the countries in which they were promulgated. Those laws only were abrogated by them, which were abrogated by the regulations they established. In other respects, the codes not only permitted, but, in some instances, expressly directed, that the *Ancient Customs* should remain in force. Thus,

in all the countries governed by the ancient codes, there existed at the same time, a written body of law, sanctioned by public authority, and usages or customs, admitted to be of public authority, by which those cases were frequently governed, for which the written body of law contained no provision. After the ancient codes and capitularies fell into desuetude, these customs were multiplied.

2. By degrees *Written Collections* of them were made by public authority; others, by individuals, and depended therefore, for their weight, on the private authority of the individuals, by whom they were made, and the authority which they insensibly obtained in the courts of justice.

Collections of this nature committed to writing by public authority form a considerable part of the law of France, and are a striking feature of the jurisprudence of that kingdom. The origin of them may be traced to the beginning of the Capetian race. The monarchs of that time, in the charters by which they granted fiefs, prescribed the terms upon which they were to be held. These, they often abridged, enlarged and explained, by subsequent charters: they also published charters of a more extensive nature. Some of them contained regulations for their own domain; others contained general regulations for the kingdom at large. In imitation of their monarch, the great vassals of the crown granted their charters.

ters for the regulation of the possessions held of them. In the same manner, when allodial land was changed to feudal, charters were granted for the regulation of the fiefs: and, when villeins were enfranchised, possessions were generally given them, and charters were granted to regulate these possessions. Thus, each seignory had its particular usages. Such was their diversity, that throughout the whole kingdom, there could hardly be found two seignories, which were governed, in every point, by the same law.

3. With a view more to ascertain than to produce an uniformity in these usages, though the latter of these objects was not quite neglected, Charles the Seventh and his successors caused to be reduced to writing the different local customs. In 1453, sometime after Charles the Seventh had expelled the English from France, he published an ordonnance, by which he directed that all the customs and ordonnances should be committed to writing, and verified by the practitioners of each place, then examined and sanctioned by the great council and parliament; and that the customs, thus sanctioned, and those only, should have the force of laws. Such were the obstacles in the way of this measure, that forty-two years elapsed before the customs of any one place were verified. From that time, the measure lingered, but it was resumed in the reign of Lewis XII, and about



the year 1609, was completed. The customs of Paris, Orleans, Normandy, and some other places, were afterwards reformed. Those of Artois and St. Omer were reformed within the last hundred years.

The manner of proceeding, both in reducing the customs and reforming them, was, generally speaking, as follows. The king, by his letters patent, ordered an assembly of the three states of each province. When this assembly met, it directed the royal judges, greffiers, maires, and syndics, to prepare memoirs of all the customs, usages, and forms of practice, they had seen in use, from of old. On receiving these memoirs, the states chose a certain number of notables, and referred the memoirs to them, with directions to put them in order, and to frame a cahier or short minute of their contents. This was read at the assembly of the states; and it was there considered whether the customs were such as they were stated to be in the cahier;—at each article, any deputy of the state was at liberty to mention such observations as occurred to him;—the articles were then adopted, rejected, or modified, at the pleasure of the assembly, and, if they were sanctioned, were taken to parliament and registered. The customs of each place, thus reduced to writing and sanctioned, were called the *Coutumier* of that place:—they were formed into one

collection, called the *Coutumier de France*, or the *Grand Coutumier*. The best edition of it is Richebourgh's, in four volumes, in folio. It contains about one hundred collections of the customs of provinces, and two hundred collections of the customs of cities, towns, or villages. Each coutumier has been the subject of a commentary: five and twenty commentaries, (some of them voluminous), have appeared on the coutumier of Paris. Of these commentaries, that of Dumoulin has the greatest celebrity. *Les Etablissements de St. Louis*, hold a high rank for the wisdom with which they are written, and the curious matter they contain. The *Coutumier de Normandie*, for its high antiquity, and the relation it bears to the feudal jurisprudence of England, is particularly interesting to an English reader: Basnage's edition, and his learned commentary upon it, are well known.

4. These are the principal sources of the Feudal Jurisprudence of France; it remains to take some notice of the *chief compilations, by which the feudal policy of other kingdoms is regulated*. The most curious of all collections of feudal law is that entitled *Assizes de Jerusalem*. In 1099, the object of the first crusade was effected by the conquest of Jerusalem. Godfrey of Bouillon, who was elected king of Jerusalem, but refused the title, called an assembly of the states of his

new kingdom. The patriarch, the chief lords, their vassals, and their *arriere-vassals* attended. With general consent, the collection in question was formed, under the title of "*Les Loix, Statuts, & Coutumes, accordées au Royaume de Jerusalem, par Godefroi de Bouillon, l'an 1099; par l'avis du Patriarche et des Barons.*" As this collection was made at a general assembly of feudal lords, it may naturally be supposed to contain some of the wisest and most striking rules, by which the feudal polity of Europe was then regulated. But, as the principal personages who engaged in that crusade came from France, it may be considered as particularly descriptive of the laws and usages of that country.

5. The next to these, in importance, are the *Books of Fiefs*, which, probably in the reign of Frederick the Second, Hugolinus, a Bononian lawyer, compiled from the writings of Obertus of Otto, and Gerhardus Niger, and the various customary laws then prevailing in Italy: they are sometimes added, under the title *Decima Colatio*, to the *Novells*; and are to be found in most of the editions of the *Corpus Juris Civilis*. In the edition of Cujas they consist of five books; the first, contains the treatises of Gerhardus Niger; the second and third, those of Obertus of Otto; the fourth, is a selection from a collection of con-

## THE CANON LAW.

**T**HE following sheets, after some introductory matter respecting, I. the religious worship and hierarchy of Pagan Rome; II. respecting the rise and progress of Christianity, from its being the most persecuted sect, to its becoming the established church of the Roman empire; and III. respecting the principal orders of the Christian hierarchy; will contain, IV. a mention of the general materials, and V. an historical account of the particular documents, of which the **CANON** Law is composed.

### I.

I. 1. It seems generally understood that the **ANCIENT RELIGION OF ROME** was of Celtic extraction, without images, without temples, and with few religious rites; that Numa established many ceremonies, and built a temple for sacrifices to the one eternal God; that, in other respects, he left the religion of Rome in its ori-

ginal simplicity; and that Tarquinius Priscus introduced into it the superstitions of the Greeks and Hetruscans.

I. 2. THE GODS, whom the Romans worshipped, were divided into the *Dii Majorum Gentium*, or the great cœlestial deities, with the *Dii Selecti*, and the *Dii Minorum Gentium*, or the inferior gods. The cœlestial deities were twelve in number: Jupiter, the king of gods and men; Juno, his sister and wife; Minerva, the goddess of wisdom; Vesta, the goddess of fire; Ceres, the goddess of corn and husbandry; Neptune, the god of the sea; Venus, the goddess of love and beauty; Vulcan, the god of fire; Mars, the god of war; Mercury, the god of eloquence and trade; Apollo, the god of music, poetry, medicine and augury; and Diana, the goddess of the woods. The *Dii Selecti* were Saturn, the god of time; Janus, the god of the year, and Rhea his wife; Pluto, the king of the infernal regions; Bacchus, the god of wine; Sol, the sun; Luna the moon; and Genius, each man and each place's tutelary god. The *Dii Minorum Gentium* were the *Dii Indigetes*, or heroes ranked among the gods on account of their heroic virtues, as Hercules, Castor and Pollux, Æneas and Romulus; the *Lares*, or household deities, as Penates, less than the *Dii Indigetes*, as the *Penates*, and the *Penates*, as the *Penates*.

I. 3. To the service of these gods *several colleges of priests* were dedicated:—Fifteen Pontiffs, whose office it was to judge and determine on all sacred things; fifteen Augurs who, from the flight, chirping or feeding of birds, and fifteen Aruspices who, from the entrails of victims, derived omens of futurity; the Quindecemviri, who had the care of the Sibylline books; the Septemviri, who prepared the sacred feasts; the Fratres Ambarvales, who offered up sacrifices for the fertility of the grounds; the Curiones, who officiated in the Curiae; the Feciales, or sacred persons employed in declaring war and making peace; the Sodales Titii, whose office it was to preserve the sacred rites of the Sabines; and the Rex Sacrorum, to whom that title was given from his performing certain sacred rites, which could only be performed by royal hands.

In addition to these, each god had his Flamines, or particular priests. The six vestal virgins had the care of the sacred fire in the temple of Vesta, and the secret pledges of the eternal duration of Rome were intrusted to them. Every part of the empire abounded with temples and statues, and in every temple and statue a divine something was supposed to reside.

When we consider the general absurdity of the pagan creed, we find it difficult to suppose, that any rational being could possibly believe its

doctrines, or that it should become the national religion of a great and sensible people. Those doubts increase on us, when we see how often the religious prejudices of the Romans were used by the leading men of Rome, as an engine for political purposes; when we consider the ridicule with which the less and even the greater deities were treated by their poets, philosophers, and historians; and when we read the passages in the works of Cicero and other writers, in which, often indirectly, and sometimes in the most direct terms, they deliver it as their opinion, that, in religion there are many truths, which it is not expedient the vulgar should know; and many falsehoods, which it is useful for the people to receive as truths. But there is reason to believe, that till the Greek philosophy found its way into Rome, the general body of the Romans was sincere in the worship of their gods; and that, even after the introduction of the Greek philosophy, the number of those who gave up the whole of the national creed was very small. A freedom, even from the lowest kind of superstition, is often mentioned by their writers as a great effort of the human mind: and the writings of Cicero demonstratively prove, that those who rejected the popular system of religion, had no settled system of religion to substitute in its place. The

tion, which pagan philosophy could not effect, it is the triumph of Christianity to have accomplished; and to have introduced at the same time, a simple and sublime religion, accommodated to all persons, all times, and all circumstances, on which the weak and the strong may equally rely.\*

\* Beaufort, Rep. Rom. l. 1. Adams's Roman Antiquities, 281—303.

## II.

By the law of Athens, the act of introducing foreign deities was punished with death. The law of Rome was not so severe: Mosheim and Bynkershoek seem to prove, that though the Romans would not allow any change to be made in the religions which were publicly professed in the empire, nor any new form of worship to be openly introduced, yet that, except when it threatened danger to the state, they granted a **FREE TOLERATION OF FOREIGN WORSHIP**, not only to individuals but to bodies of men.

The Christians, whose mild, unassuming, and benevolent morality entitled them to universal good will, were alone to share the benefit of this general toleration, till the reign of Nero, till



the triumph of Constantine the Great over his rival Licinius, they were always treated with harshness, and repeatedly suffered the severest persecutions.

The favour of Constantine to them was, immediately after his first successes, shown by his repealing of the laws enacted against them. By the edict of Milan he restored them to all their civil and religious rights, and allowed them, in common with the rest of his subjects, the free choice and exercise of their religion. In the general dispensation of his favours, he held, with an impartial hand, the balance between his christian and heathen subjects. His successors, except during the short interval of Julian's reign, strongly encouraged christianity and discountenanced heathenism; and finally, by the edicts of Theodosius, the ancient worship of Rome was proscribed, and christianity became the established religion of the empire. Till those edicts, the spirit of polytheism, had lingered among the principal nobility of Rome; after them, it lingered among the Grecian philosophers: but by his edict in 529, Justinian silenced the schools of Athens; and to that era, the final extinction of Paganism is always assigned.

\* *Francis Balduinus, &*  
*peratorum in Ch*

*imperius ad edicta im-*  
*peratorum in Ch*

## III.

IN respect to the CHRISTIAN HIERARCHY, the Roman empire, at the time when Christianity obtained in it a legal establishment, under Constantine the great, had reached its utmost limits. It was divided into four Præfectures: the Eastern, which comprised the country between Thrace and Persia, the Caucasus and the Cataracts of the Nile; the Præfecture of Illyricum, which comprised Pannonia, Dacia, Macedonia, and Greece; the Præfecture of Italy, which comprised Italy, Rhœtia, the Islands of the Mediterranean, and the part of Africa from the westernmost mouth of the Nile to Tingitana; and the Præfecture of the Gauls, which comprised Spain, Britain, and the part of Africa from Tingitana to the western ocean. Each præfecture was divided into several dioceses; each diocese

kershoek, *Dissertatio de Cultu Peregrinæ Religionis apud Romanos, in Opusculis, Lugd. Bat.* 1719. Mosheim, *de Rebus Christianorum ante Constantinum Magnum, Commentarii, Helmstedii, 4to, 1753, p. 1, sect. 8: Seculum primum, 27—32.* In his *Six Letters on Intolerance*, London, 1791, Sir Geo. Colebrooke has collected many curious facts to show, that the religious toleration of the Romans was by no means so perfect as is generally thought.

into several provinces ; and in each province there was one, and sometimes more than one mother-town, on which other towns depended. The dioceses were thirteen in number, the provinces one hundred and twenty.

In the establishment of her hierarchy, the Christian church, particularly in the east, appears to have conformed very much to this model. Before the translation of the seat of the Roman empire to Constantinople, the church had the three Patriarchates of Rome, Antioch, and Alexandria ; after its translation, the bishops of Constantinople acquired importance ; by degrees they obtained ecclesiastical jurisdiction over Thrace, Asia, and Pontus, and were elevated to the rank of patriarch : afterwards, the same rank was conferred on the bishop of Jerusalem : and, according to Mr. Gibbon's observation, (vol. vi. p. 378), the Roman bishop was always respected as the first of the five patriarchs. Thus, speaking generally, the patriarchs corresponded in rank with the prefects ; in each diocese there was a primate ; in each province, one or more than one metropolitan ; and each metropolitan had under him a certain number of suffragan bishops. Regular funds, proportioned to their respective ranks, were appropriated for their support, except in cases of singular enormity they were exempted from the civil jurisdiction of the magistrate ; and

in many other important articles a distinction between the clergy and the laity, wholly unknown in the law of heathen Rome, was admitted into the Codes of the Christian emperors.<sup>1</sup>

## IV.

THE liberty of holding ecclesiastical assemblies was one of the most important privileges of the dignified members of the clergy. Occasional assemblies were convened of all the bishops in the Christian world, or of all the bishops within the limits of a patriarchate: and, generally in the spring and autumn of every year, the metropolitan convened the bishops of his province to debate on its religious concerns. From Concilium, which, among the Romans, denoted a select meeting in contradistinction to Comitia, which they used to denote general meetings, these assemblies received, in the Latin church, the appellation of councils;

<sup>1</sup> *Frederici Spanhemii, Geographia Sacra, Distributio Diæceseon et Provinciarum, inde a Temporibus Constantini Magni in orbe utroque, orientali et occidentali; inter Opera Omnia, Lugduni Batavorum, fol. 1 vol. 75—204; Bingham's Antiquities of the Christian Church, London, 1726, fol. 2 vol. lib. 9; Du Pin, de Antiquâ Ecclesiâ, Par. 1686; Petrus de la Motte, de Ecclesiâ, Par. 1726, fol. 1.*

in the Greek church they were called *synods*; at a subsequent time, the word *council* still retaining its original import, the word *synod* was used, in the Latin church, to denote the assembly of a bishop and his clergy. The Scripture is the first, the decrees of the councils are the second source, from which **THE MATERIALS OF THE CANON LAW** are drawn. The decrees and decretals of the popes are the third; the works of the fathers and other respectable writers are the fourth. By the decrees of the popes are meant their decrees in the councils held by them in Italy; the decretals are their answers to questions proposed to them on religious subjects.

## V.

Those, who profess to give an **HISTORICAL ACCOUNT OF THE CANON LAW**, divide it into three periods: the ancient, the middle, and the modern:—the ancient, begins with the first, and ends with the eighth century, when Isidore Mercator's collection of canons made its appearance; the middle, begins with that century, and ends with the council of Pisa, in 1409; the modern, begins with that council, and extends to the present time.

## V. 1.

**THE ANCIENT PART OF THE HIS-**

**TORY OF THE CANON LAW** is remarkable for several Collections of Canons.

1. Some are **CANONS OF THE GENERAL CHURCH.**

The first collection of these canons is called the *Apostolic Canons*. They have been ascribed to the apostles ; and it has been said, that St. Clement, the immediate successor of St. Peter, was the collector of them. If the apostles had really promulgated them, it is difficult to assign a reason for their not having been admitted to a place in the writings which form the New Testament ; but, of the ancient fathers, St. John Damascene alone has done them that honour. From their being omitted in the canon of the New Testament, from the universal silence of the fathers of the three first ages respecting them, from the mention in them of many offices and customs, which there is every reason to suppose of a later origin, from no appeals having been made to them in the controversies which arose in times subsequent to them, and on which their language is decisive, and from no mention having been made of them in the synod held at Rome in 496, which mentions all the writings of the Old and New Testament, they are not considered to have been promulgated. Bishop Beveridge, who has published a well learned edition, supposes they were made under the sanction of bishops, who held

the sees founded by the apostles, and <sup>also</sup> that they were collected towards the end of <sup>Christ.</sup> the second or beginning of the third century. The first regular mention of them is found in the second council of Constantinople.

The Greek church, at least since the synod in Trullo, in 692, has singularly respected them, and considered the 85 first of them as authentic: the Latin church seems to have admitted the 50 first of them. They were first printed at Venice in 1563, in 4to, and have often been reprinted . . . 200

*The Apostolic Constitutions* are of high antiquity, have been much interpolated, and are of no authority. It is supposed that they first appeared in the fourth century . . . 200

2. Hitherto, the canons spoken of are the canons of the general church: there also are *CANONS OF PARTICULAR CHURCHES*.

In respect to the *Greek Church*, the first collection of canons which has come down to us from the Greek church, is the *Codex Ecclesie Orientalis*. It is supposed to have been first published in . . .

This collection contains 165 canons: 90 of them are canons of the general council.

**Canon:** he is generally called Joannes <sup>After</sup> Scholasticus . . . . . <sup>Christ</sup> 560

We know little more of the canons of the Greek church till the *Synod in Trullo*. By that synod, a code was formed of the canons framed at it, of those framed at the synods of Carthage, and at the council of Constantinople, held by Nectarius, and of some writings of the fathers. To those were added the twenty-two canons of the second council of Nice, and the fourth council of Constantinople. . . . . 699

Here, before the schism, which separated the Greek from the Latin church, the code of the Greek canon law rested. Under Photius, two councils were held at Constantinople: the canons of those councils were received by the schismatic churches of the east, and were published by Photius in his *Nomo-Canon*, or modern collection of canons, in . . . . . 883

With the *Commentaries of Balsamon, Zonaras, and Aristenus*, and other curious articles, and with a learned preface, all these collections of canons were published, at Oxford, by Dr. Beveridge, afterwards Bishop of St. Asaph, under the title, "*Pandectæ Canonum Sanctorum Apo-*



“ *lorum et Conciliorum ab Ecclesia Græca recep-*  
 “ *torum.*” “ Those, says Van Espen, who will  
 “ read with attention, the notes of the learned  
 “ editor, will find much very learned exposition  
 “ of the canon law, and much instructive matter  
 “ on other subjects, connected with the learning  
 “ of the canons.” “ Bishop Beveridge’s works,”  
 says L’Advocat, “ are written with so much  
 “ dignity, majesty, learning, and modesty, that  
 “ he is thought, with reason, to be one of the  
 “ greatest and most learned men whom England  
 “ has produced.” An epistolary correspondence  
 was carried on between him and Bossuet.

3. In the *LATIN CHURCH*, frequent men-  
 tion is made of the *Vetus Canonum Latinorum*  
*Editio*. It was superseded by the collection  
 made by *Dionysius Exiguus*, about the beginning  
 of the sixth century. That collection was after-  
 wards enlarged by the decrees of Pope Symma-  
 chus, Pope Hormisdas, and Pope Gregory the  
 Second. This collection was of great authority  
 both in the Greek and the Latin churches.

4. Other Churches had their Collections of  
 Canons. The *CHURCH OF AFRICA* had  
 hers: the *Breviatio Canonum of Fulgentius Fer-*  
*randus*, and the *Breviarium and Concordia Ca-*  
*nonum of Cresconius* are added to it.

The *CHURCH OF SPAIN* also had her  
 collection of canons. It is attributed to St. Isi-

dore, Bishop of Seville; from his diocese, <sup>Adm. Chris.</sup> he is frequently distinguished by the appellation of Hispalensis.

In 790, Pope Adrian presented Charlemagne with a collection of canons. It was composed of the collection of Dionysius Exiguus, and the epistles of several popes.

At the council held at Canterbury in 873, a book of canons was produced and approved of; but we do not know what canons it contained.

## V. 2.

### 1. The MIDDLE PERIOD OF THE HISTORY OF THE CANON LAW

commences with the ninth century, at the beginning of which, or towards the end of the preceding century, *the collection of Isidore Peccator or Mercator* probably made its appearance . . . . . 760

It was brought from Spain into Germany by Riculphus, the bishop of Mayence. Who the compiler of it was, and why he assumed the name of Isidore or Mercator, are merely matters of conjecture. It sets out in the manner in which a council was held; then, the fifty first of the apostles follow: "J

“ rursusdam epistolarum decreta virorum apos-  
“ tolicorum inseruimus, id est, Clementis,  
“ Anacleti, Evaristi, et cæterorum apostolico-  
“ rum, quas potuimus hactenus reperire, epistolas  
“ usque ad Sylvestrem Papam.”

These are the celebrated decretals, concern-  
ing which, since the beginning of the sixteenth  
century, there has been so much dispute among  
the learned. They seem to have made their  
first appearance in Germany: afterwards, to have  
been received in France, and, by degrees, in  
every part of the western church. For seven  
centuries after their first appearance, neither their  
authenticity nor their authority appears to have  
been questioned.

They were first attacked by Marcilus of Padua;  
then, by Cardinal Nicholas of Cusa, during the  
Council of Basil, and afterwards by Erasmus.  
In the celebrated Centuriators of Magdeburgh,  
in Blondel, and, lastly, in Van Espen, they  
have met with most powerful adversaries: in the  
author of the celebrated treatise, “ Quis est Pe-  
“ trus,” they have found both a zealous and  
an able advocate: but he seems to concede, that  
so much is proved on them as to  
make them when they stand alone, of no au-

They were followed by what are called After  
Christ.  
the *Capitularies of Adrian* . . . . . 843

The tenth century was famous for the  
*Collection of Reginon, Abbot of Prüm* . . . 906

The eleventh, for the collection of Bur-  
chardus, bishop of Wormes, entitled *Mag-  
num Decretorum seu Canonum Volumen* . . 1000

The twelfth, for the collection of St.  
Ivo, the good lawyer. Two works are at-  
tributed to him: the *Decretum Canonum*,  
certainly belongs to him; his right to the  
second, the *Panomia*, is uncertain . . . . 1100

2. We now come to the celebrated *De-  
cretum Gratiani*, or the *Concordia Dis-  
cordantium Canonum*. Gratian was a Be-  
nedictine monk, in a monastery of Bologna.  
His work is an epitome of Canon Law,  
drawn from the decrees of councils, the  
letters of pontiffs, and the writings of an-  
cient doctors. Pope Eugenius the third  
was extremely satisfied with the work: and  
it was soon adopted in every part of the  
western church . . . . . 1150

It is divided into three parts: the first  
contains 101 distinctions or heads, and  
treats of the origin and different kinds of  
law, and particularly of the sources of ec-

clesiastical law, of persons in holy orders, and the hierarchy. The second contains thirty-six causes, as they are called, or particular cases, on which questions of difficulty arise: the third is divided into five distinctions, and contains a collection of canons relating to the consecration of churches, the sacraments, and the celebration of the divine office. The whole contains about 3000 canons or capitularies. Some are intitled *Paleæ*, the meaning of which word is not yet ascertained by the learned.

This celebrated collection abounds with errors. Towards the middle of the sixteenth century, Antonius Demochares and Antonius Contius, the former a divine, the latter a canonist, published a corrected edition of it.

A more correct edition of it we owe to the council of Trent. By a decree of that council, it was ordered that correct editions of missals, breviaries, and other books relating to ecclesiastical matters should be published.

In consequence of this decree, pope Pius the fourth engaged several learned men in the correction of the decree of Gratian. The work was continued through the pontificate of Pius the fifth. Gregory the thirteenth, the immediate successor of Pius the fifth, when a cardinal, had been employed on the work: under

his auspices, it was finally published about <sup>After</sup> Christ  
the year . . . . . 1580

Several faulty passages still remain in the work. Many of them have been pointed out by Antonius Augustinus, the Archbishop of Tarragon, in his learned and entertaining dialogues on the Emendation of Gratian.

Such is the celebrated decree of Gratian, which for 800 years, has, in every country in Christendom, been considered a valuable repository of Canon Law.—To the compilations of Isidore and Gratian, one of the greatest misfortunes of the church, the claim of the popes to temporal power by divine right, may in some measure be attributed. That a claim so unfounded and so impious, so detrimental to religion, and so hostile to the peace of the world, should have been made, is strange—stranger yet, is the success it met with.

It was soon observed, that the author had omitted in his collection several important articles. This gave rise to subsequent collections. The principal of them are the *Breviarium of Bernardus Papiensis*, and the *Collections of Johannes Galensis* and *Peter Beneventanus*. Of these, the last

only was formally approved by the see of Rome. Pope Innocent the third published a collection of his own decretal epistles. His example was followed by Honorius the third, his immediate successor.

From these five collections, and from some decretals of his own, pope Gregory the ninth commissioned St. Raymond of Pennafort, a Dominican, to form a new collection of canons. He executed the work greatly to the satisfaction of his holiness; and, under his auspices, it was published about the year 1230, under the title *Libri quinque Decretalium Gregorii Noni*. It contains all the decrees of the council of Lateran, and the decisions of many popes on particular cases. It is divided into five books . . . . . 1230

A further addition to the code of Canon Law was made by pope Boniface the eighth. It contains the decretals of all the popes, subsequent to Gregory the ninth, and the decretals of that pope. It is called *Liber Sextus Decretalium*, and was published in . . . . . 1298

On account of the differences between pope Boniface and Philip the Fair, it was not received in France.

The *Liber Sextus Decretalium* is fol-

“ now depends the authority of the Canon Law  
“ in England.

“ As for the canons enacted by the clergy  
“ under James the First, in the year 1603, and  
“ never confirmed in parliament, it has been so-  
“ lemnly adjudged, upon the principles of law,  
“ and the constitution, that where they are not  
“ merely declaratory of the ancient Canon Law,  
“ but are introductory of new regulations, they  
“ do not bind the laity; whatever regard the  
“ clergy may think proper to pay them.”

## VI.

With respect to the **AUTHORITY OF THE CANON LAW**, from which, in the present case, the part of it anterior to Gratian's decree, and subsequent to the Extravagantes Communes, must be excluded; it is composed of texts out of the Bible, passages from the writings of the fathers, the canons of general and particular councils, the decrees and rescripts of popes, and various other insertions and extracts. In each of these particulars, it possesses all the authority which the extract itself has; besides which, it possesses all the weight and authority, which it has acquired, by its having been so much adopted by courts, appealed to in disputes, taught in the schools, and praised and commended by the learned men of every state



of Christendom. With more or less limitation, it forms the basis of the ecclesiastical law of every country, where the Roman Catholic religion is professed; and, speaking generally, in protestant countries, it has the force of law, when it is not repugnant to the law of the land.\*

- \* The works, principally used in framing this account are, *Fleury's Institutions du Droit Ecclesiastique*; his *Discours sur l'Histoire Ecclesiastique*; bishop Gibson's learned but very high-church Preface to his *Codex Juris Ecclesiastici Anglicani*; lord Hardwicke's argument in the case of *Middleton v. Crofts*, 2 Atk. 650; Pehem's *Prælectiones in Jus Ecclesiasticum Universum*, Lovanii, 4 vol. 8vo. 1787; Boehmer, *Jus Ecclesiasticum Protestantium*, Halæ Magdeburgicæ, 6 vol. 4to. 1756; Gerhard Von Mastricht *Historia Juris Ecclesiastici et Pontificii*, Duisburgii ad Rhenum, Oct. 1676; Doujat's *Histoire du Droit Canonique*, Paris, 8vo. 1677; Van Espen's *Jus Ecclesiasticum Universum*, Lovanii, 6 vol. fol. 1753, a work, which, for depth and extent of research, clearness of method, and perspicuity of style, equals any work of jurisprudence which has issued from the press; but which, in some places, where the author's dreary Jansenism prevails, must be read with disgust:— a methodical and learned work with this title, “*Quis est Petrus? Seu Qualis Petri Primus? Liber Theologico-Canonico Catholicus. Editio secunda, correctior et emendatior,*

"*cum Approbatione, Ratisbonæ, 1791;*" the ablest work, in support of the papal prerogatives against the doctrines of the Sorbonne, which has come to the writer's knowledge. The account, given in it, of Isidore's Decretals is particularly interesting. *The Religionis Naturalis et Revelatæ Principia of Doctor Hook, Paris, 3 vols. 8vo. 1774;* the third volume of this work is, perhaps, the best treatise extant, on the ecclesiastical polity of the church, according to the notions of the Sorbonnists. It deserves to be more known in this country; it must have given the French divines an high opinion of the perspicuity and precision of English writing.

## A P P E N D I X.

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### NOTE I.

**THE EXCLUSIVE DOMINION AND PROPERTY OF THE BRITISH SEAS** is one of the most splendid and valuable prerogatives of the Crown of England.—The following account of it is taken from a note to that part of the 14th edition of Coke upon Littleton, which was executed by the present writer.

“ The **JUS MARIS** of the king may be considered under the two-fold distinction, of the *right of jurisdiction*, which he exercises by his admiral, *and his right of propriety or ownership*.

WITH RESPECT TO THE RIGHT OF JURISDICTION, the subject is elaborately discussed by Mr. Selden, in his *Mare Clausum*, a noble exertion of a vigorous mind, fraught with profound and extensive erudition. In the first part of it, he attempts to prove, that the sea is susceptible of separate dominion. In this, he has to combat the opposite opinion of almost all civilians, and particularly the celebrated declaration of one of the Antonines, (L. 9. D. De Lege Rhodiâ) “ *Ego quidem mundi dominus, lex autem maris, &c.*” by which the emperor has been generally considered to have disclaimed any right to the dominion of the sea. For a different interpretation of this law, Mr. Selden argues with great ingenuity. In this, he is followed, in some

measure, by Bynkershooek, in his treatise *De Legē Rhodiā de Jactu, Liber Singularis*, in the 2d vol. of the edition of his works published by Vicat, Col. Allob-1761.—Mr. Selden, in the second part of his work, attempts to shew, that in every period of the British History, the kings of Great Britain have enjoyed the exclusive dominion and property of the British seas, in the largest extent of those words, both as to the passage through and the fishing within them.—He treats his subject methodically, and supports his position with the greatest learning and ingenuity.—The reader will probably feel some degree of prepossession against the extent of this claim; but he will find it supported by a long and forcible series of arguments, not only from prescription, from history, from the common law, and the public records of this country, but even from the treaties and acknowledgments of other nations. Here he is opposed by Bynkershooek, in his *Dissertatio de Domino Maris*, also published in the second edition of his works. But it will be a great satisfaction to the the English reader to find, how much of the general argument used by Mr. Selden, is conceded to him by Bynkershooek. Even on the most important part of the argument, the acknowledgment of the right by foreign princes, Bynkershooek makes him considerable concessions: “Plus momenti,” says he, “autēre  
 “ videntur gentium testimonia, quæ illud Anglorum  
 “ imperium agnovere. De confessionibus loquor non  
 “ injuria extortis, sed libere et sponte factis. Eæ  
 “ autem hujusmodi quædam confessionis, neutiquam  
 “ po it.”—After this acknowledgment, correct  
 of arguments used by Mr. Selden,  
 completely established.

The chief objection made by Bynkershooch to the right of the crown of England to the dominion of the sea is, the want of uninterrupted possession, as he terms it, of that dominion, “So long as a nation has possession of the sea, just so long,” says Bynkershooch, “she holds its dominion. But to constitute this possession, it is necessary that her navies should keep from it the navies of all other nations, and should themselves completely and incessantly navigate it avowedly in the act or for the purpose of asserting her sovereignty to it.” This he contends, has not been done by the English; on this ground therefore he objects to the right of dominion of the English sea; and on the same ground he objects to the right of the Venetians to the dominion of the Adriatic, and to the right of the Genoese to the dominion of the Ligustic. But this seems carrying the matter too far. If it be admitted, (of which there unquestionably are many instances), that the sovereign power of a state may restrain her own subjects from navigating particular seas, she may also engage for their not doing it, in her treaties with other nations. It can never be contended, that after such a treaty is entered into, the acts of possession mentioned by Bynkershooch are necessary to give it effect and continuance, unless this also make a part of the treaty. It is sufficient, if the acts of possession are so often repeated, as is necessary to prevent the loss of the right, from the want of exercise of it. In those cases, therefore, where the treaty itself, establishing the exclusive dominion we are speaking of, is produced, the continued and uninterrupted possession mentioned by Bynkershooch cannot be necessary. But public rights, even the most certain and incontestible, depend often

on no other foundations than presumption and usage. The boundaries of territories by land, frequently depend on no other title. Then, if Bynkershoek be right in his position, that the sea is susceptible of dominion, should not mere prescription and usage in this as in any other case, be sufficient to constitute a right? Upon what ground are the continued and uninterrupted acts of possession, mentioned by Bynkershoek, required to constitute a title in this, more than in any other case of public concern?—If this be thought a satisfactory answer to the objection made by Bynkershoek, the remaining difference between him and Mr. Selden, respecting the right of the British monarch to this splendid and important royalty will be inconsiderable.—It is to be added, that Mr. Selden's treatise was thought so important to the cause, in support of which it was written, that a copy of it was directed to be deposited in the Admiralty. Those who wish to procure it, in an English translation, should prefer the translation published in 1633, by a person under the initials of J. H. to that by Marchmont Needham. On this subject (with the exception of Sir Philip Meadows) subsequent writers have done little more than copy from Selden. The subject, however, is far from being exhausted. The system adopted by Sir Philip Meadows, in his *Observations concerning the Dominion and Sovereignty of the Seas*, printed in 1689, is more moderate than Mr. Selden's.—He calls in question, at least indirectly, a material part of Mr. Selden's position, and places the right of the kings of England to the dominion of the sea upon a much narrower ground. He confines it to a right of excluding all foreign ships of war from passing upon any of the seas of England, without spe-

cial licence for that purpose first obtained ; to the sole marine jurisdiction, within those seas ; and to an appropriate fishery. He denies that the salutation at sea, by the flag and top-sail, has any relation to the dominion of the sea ; and he asserts, that, it was never covenanted in any of the public treaties, except those with the United Netherlands, and never in any of these till the year 1654 ; he contends it is not a recognition of sovereignty, but at most an acknowledgment of pre-eminence. His treatise is deservedly held in great estimation."

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## NOTE II.

THE ALPS begin with Col del Angentera, which lies to the west of a supposed line from Monaco to the Mons Visulus, or Monte Viso. Thence, they proceed, in a semicircular line of about 500 miles, first on the south-eastern limits of France, afterwards on the southern limits of Swisserland, the Grisons, and the Tyrol, and then on the western limits of Styria, Carinthia and Carniola to the Sinus Flanaticus, or the Gulph of Cornaro on the Hadriatic.

1. The *Alpes Maritimæ* take their name from the sea of Genoa, and extend from it up to Mons Visulus or Monte Viso. The most noted mountains in this part of the Alps are the Camellon and the Tendé.

2. The *Cottian Alps* reach from Monte Viso to Mount Cenis ; they received their appellation from a

territory of that name, of which Suza was the metropolis; they contain the Mons Matriona, or the Mont Genevre, where the river Durance springs.

3. The *Alpes Graiæ* extend over Le Petit St. Bernard, the scene of the martyrdom of the Theban legion, to the Mons Jovis, or Le Grand St. Bernard. Hitherto the direction of the Alps is to the north.

4. On the northern side of that part of the Rhone, which flows over Valais into the lake of Geneva, are the *Alpes Helveticæ*; on its southern side are the *Alpes Penninæ*, the eastern chain of which is called *Alpes Lepontinæ*: they extend to the Mons Summus, or Mont St. Gothard.

5. The *Alpes Rhæticæ* extend from Mont St. Gothard over the Mons Adula, or the Adule, where the two fountains of the Rhine arise, to the source of the Drave. A mountainous country to the south of them, where the town of Trent lies, was called the *Alpes Tridentina*.

6. The *Alpes Noricæ* lie on the north of the Drave, and extend over parts of Austria, Styria, and Carinthia; not far from the close of them the *Alpes Pannonicæ* or Kahlenburgh mountains rise. The *Alpes Bastarnicæ* are the Carpathian mountains, the boundary of Hungary on the north and east.

7. The *Alpes Carnicæ* lie on the south of the Drave, and reach to Nauportus or Leyback, where the Alpine heights of Italy properly close. Two ranges of mountains proceed from them; the *Alpes Venetæ*, which extend into the Venetian possessions on the Terra Firma, and *Alpes Julæ*, which are spread over the country from Forum Juli, or Friuli, to the eastern extremity of the Adriatic.



Where the Alpes Carnicæ end, the *Mons Albius* begins: the *Alpes Bebianæ*, or the Welebitchian, or Murlakan mountains proceed from it, and extend southerly in a line of about 300 miles over Illyricum to *Mons Orbelus*, whence they branch into the Rhodope and Hæmus.

Such is the chain of the Alps: the *Appenines* are of equal celebrity. They rise in the Col della Tende; after stretching on the east of the supposed line from the Portus Monæci to Mons Vesulus, along the Gulph of Genoa, at no great distance from the coast, they proceed eastwardly to the centre of Italy, and afterwards to the south, always approaching nearer to the eastern than to the western coast. After they arrive at the Mons Gargamus, they take a south-westernly direction, and reach the Calabrian extremities of Italy. This account of the Alps is taken from *Cluverius's Ital. Ant. lib. I. ch. 30, 31, 32; Cellarius's Geog. Ant. lib. 2; Busching's Geography; Chauchard's Map, published by Stockdale; Bergier's Histoire des Grands Chemins de l'Empire Romain, 2 vol. 4to. Bruxelles, 1738; and Mr. Pinkerton's Geography.*

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### NOTE III.

THE following account of the PRÆTOR'S JUDICIAL POWER, and its variations, is given by Doctor

Bever, in his History of the Legal Polity of the Roman State, B. ii. c. 6.

"Originally, no more than one prætor was appointed; but, as the splendour and reputation of this illustrious city daily drew to it a vast conflux of strangers, the judicial business increased beyond the power of a single magistrate to dispatch. This demanded, therefore, the creation of a second, to preside over the causes of foreigners; from whence he was called "*Prætor Peregrinus*," to distinguish him from the former, who from the particular objects of his magistracy, was styled "*Urbanus*." When the empire received a further augmentation from the conquered provinces, each of these was allowed its provincial judge, with similar title and power.

Another century introduced a new refinement upon this institution. As the objects of judicature, both criminal, and civil, multiplied apace, and a great variety of new causes arose, very distinct, in their nature from each other, for the more easy and expeditious administration of justice, it was found necessary to throw them into distinct classes, called "*Questiones*," and to assign particular jurisdictions and judges to each who were intitled *Prætors* and *Quæstors*. These were obliged to exercise their respective jurisdictions within the city for the space of one year, after which they were dismissed into their several provinces, under the character of *Proprætors*. These great officers, of whatever rank or denomination, were first elected by the people, in the "*comitia centuriata*;" but the right of assigning them to their particular provinces belonged to the senate.

The prætorian edicts, which constitute that branch of the old civil law now under consideration, were certain rules or forms, published by every prætor at the entrance upon his office, on the calends of January, signifying the methods whereby he proposed to administer justice during that year. These were hung up in the public court in a white table for the inspection of suitors and practitioners; but the authority of them lasted no longer than the office itself, unless they received a fresh ratification from the successor, and in that case they were called "Edicta Translatitia."

The prætor had no power to abrogate or alter the laws, but only to temper them with equity, to apply them to the particular cases before him, according to his own ideas of justice, and to supply whatever was wanting to give them their full and proper effect. His edicts, therefore, was considered only as the voice of the law, but not law in its most comprehensive meaning, unless they happened to be adopted and continued by succeeding magistrates; under which qualified character only they are considered by Justinian himself. But notwithstanding their inferiority of rank in the scale of legislation, they were yet held in the highest esteem by some of the greatest princes and statesmen in after times, and by none more than himself, as appears from his inserting so large a number of them in the Digest.

In process of time, indeed, as the age grew more corrupt, and as these judges were more intent upon their own private views and emolument than upon a punctual and faithful administration of justice, they were very apt to vary even from their own edicts, when it

happened to suit the convenience and interest of their friends or themselves. This opened a door to many shameful acts of injustice, and once more called forth that truly patriotic tribune, Caius Cornelius, under whose influence a law was enacted, to oblige the prætors to adhere to certain established rules, and not to depart from those which they themselves had laid down, at the entrance upon their respective magistracies."



## NOTE IV.

THE following account of THE MODES OF QUOTING THE CIVIL AND CANON LAWS is taken from *Dr. Halifax's Analysis of the Roman Civil Law*, Camb. 1775, Note on page 2.

"It may not be amiss, for the sake of Beginners, to explain here the method of *quoting* the several parts, which now compose the CORPUS JURIS ROMANO-CIVILIS. The INSTITUTIONS are contained in Four Books: each Book is divided into Titles; and each Title into Paragraphs; of which the first, described by the Letters *pr.* or *princip.* is not numbered. The DIGESTS or PANDECTS are in Fifty Books: each Book is distributed into Titles; each Title into Laws; and, very frequently, Laws into Paragraphs, of which the first is not numbered. The CODE is comprized in Twelve Books; each of which is divided, like the Digests, into Titles and Laws; and, sometimes, Laws into Paragraphs.



The **NOVELS** are distinguished by their Number, Chapter and Paragraph.

The old way of quoting was much more troublesome, by only mentioning the Number, or initial Words of the Paragraph or Law, without expressing the number either of Book or Title.

Thus § *si adversus* 12 *Inst. de Nuptiis*, means the 12th Paragraph of the Title in the Institutions *de Nuptiis*, which Paragraph begins with the Words *si adversus*; and which a modern Civilian would cite thus, I. 1. 10. 12. So *l. 30 D. de R. J.* signifies the 30th Law of the Title in the Digests *de Regulis Juris*: according to the modern way, thus, D. 50. 17. 30. Again, *l. 5. § 3. ff. de Jurejur.* means the 3d Paragraph of the 5th Law of the Title in the Digests *de Jurejurando*: better thus, D. 12. 2. 5. 3. And here note, that the Digests are sometimes referred to, as in the last instance, by a double *f*; and at other times by the Greek Π or π.

The method of quoting the **ROMAN CANON LAW** is as follows. The **DECREE**, as said above, consists of Three Parts; of which the first contains 101 Distinctions, each Distinction being sub-divided into Canons: thus 1 *dist. c. 3. Lex* (or 1 *d. Lex*) is the first Distinction, and 3d Canon, beginning with the word *Lex*. The second part of the Decree contains 36 Causes; each Cause comprehending several Questions, and each Question several Canons: thus 3. *qu. 9. c. 2. Caveant* is Cause the 3d, Question the 9th, and Canon the 2d, beginning with *Caveant*. The third part of the Degree contains 5 Distinctions, and is quoted as the first part, with the addition of the words *de Consecratione*, thus

*de Consecr. dist. 2 can. Quia corpus* (or *can. Quis corpus 35 dist. 2. d. Consecr.*) means the 2d Distinction, and the 35th Canon, of the Treatise *de Consecratione*, which Canon begins with *Quia corpus*.

The DECRETALS are in Three Parts; of which the first contains Gregory's Decretals in 5 Books; each Book being divided into Titles, and each Title into Chapters: And these are cited by the name of the Title, and the number of the Chapter, with the addition of the word *Extra*, or the capital letter X: thus *c. 3. Extra de Usuris*; is the 3d Chapter of the Title in Gregory's Decretals, which is inscribed *de Usuris*; which Title, by looking into the Index, is found to be the 19th of the 5th Book. Thus also, *c. cum contingat 30. X. de Offic. & Pot. Jud. Del.* is the 30th Chapter, beginning with *Cum contingat*, of the Title in Gregory's Decretals, which is inscribed *de Officio et Potestate Judicis Delegati*; and which, by consulting the Index, we find is the 29th Title of the 1st Book. The Sixth Decretal, and the Clementine Constitutions, each consisting of 5 Books, are quoted in the same manner as Gregory's Decretals; only, instead of *Extra* or X, there is subjoin'd *in sexto* or in 6. and *in Clementinis* or in *Clem.* according as either part is referred to: thus *c. Si gratiose 5. de Rescript. in 6.* is the 5th Chapter, beginning with *Si gratiose*, of the Title *de Rescriptis*, in the 6th Decretal; the Title so inscribed being the 3d of the 1st Book. And *Clem. 1. de Sent. et Re Judic.* (or *de Sent. et R. J. ut calumniis. in Clem.*) (or *c. ut calumniis, 1. de Sent. et R. J. in Clem.*) is the 1st Chapter of the Clementine Constitutions, under the title *de Sententiâ et Re Judicatâ*; which Chapter begins with

*Ut calumniis*, and belongs to the xith Title of the 2d Book.

The EXTRAVAGANTS of John the 22d are contained in one Book, divided into 14 Titles: thus *Extravag. Ad Conditorem. Joh. 22, de V. S.* means the Chapter, beginning with *Ad Conditorem*, of the Extravagants of John 22d; Title, *de Verborum Significationibus*. Lastly, the Extravagants of later Popes are called *Communes*; being distributed into 5 Books, and these again into Titles and Chapters: thus *Extravag. Commun. c. Salvator. de Præbend.* is the Chapter, beginning with *Salvator*, among the *Extravagantes Communes*; Title, *de Præbendis*.





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AN ESSAY  
ON THE LIFE  
OF  
*MICHEL DE L'HÔPITAL,*  
CHANCELLOR OF FRANCE.

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VOL. II.

I 1

" The principles of religious toleration, which it was the constant object  
• of the Chancellor l'Hopital to establish, were the same as those expressed  
" in the excellent preface prefixed by his friend, the President de Thou,  
" to his Universal History, which Lord Mansfield, in his celebrated speech  
" in the case of the Chamberlain of London against Mr. Allen Evans,  
" declared he never read without admiration." p. 22.

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THE  
LIFE OF L'HÔPITAL.

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INTRODUCTORY CHAPTER.

*Some mention of the principal works from which this account of the Chancellor de l'Hopital is taken. —*

PANEGYRICS and funeral orations fill a considerable space in the literature of France ; and those, who are most disposed to contest her claim to universal pre-eminence in the Belles Lettres, acknowledge that, in those branches of eloquence, she has considerably excelled all her literary rivals. Few works of taste or genius are more admired than the funeral orations of Bossuet : those of Flechier are of an inferior cast ; but, after its twentieth perusal, his oration on the death of Turenne will again be perused with pleasure. The elôges of distinguished academicians, by Fontenelle and d'Alembert do not aspire to eloquence ; they profess no more than to give a short view of the lives of the authors whom they celebrate, a very sum-

mary account of their principal works, and a slight mention of the events in the literary world, with which, in some manner or other, they were connected. The former are reproached for too frequent prettiness; the latter for a general tameness of manner; but both of them occasionally abound in touches of great delicacy, and are so agreeably written, that we doubt whether any reader has perused a single *éloge* composed by either of those writers, without lamenting its brevity.

With these works, however, our praise of French panegyric must close. About the middle of the last century a new field was opened to it, by the prizes, which the academy then began to hold out to those, who should produce the best panegyric of the hero (for they were never less than literary heroes), whom the academy assigned for the theme of praise. This set all the wits of France at work: but the event was not very favourable to their reputation. The number of works, which obtained the approbation of the public, was very small; if any of them are now read, they are the *éloges* composed by M. Thomas. The notes, with which he has accompanied them, are interesting; and, if his incessant attempts, in the text, at the sublime, generally fail, they also sometimes succeed. Thus, in his *éloge* of the emperor Marcus Aurelius, he mentions the celebrated expression of the emperor Titus.—“ i have lost a day, for, during this day, I have done good to none.”—What dost thou say?” exclaims

the orator.—“ The day, in which those words were  
“ pronounced was not lost ; on no day wast thou so  
“ great, or so useful to the world, as when thou  
“ gavest that eternal lesson to kings.”—In this  
passage there is both sense and grandeur ; but in  
the writings of its author such passages are not  
often found.

The magistrate, whose life is the subject of the  
present pages, was proposed by the French academy  
in the year 1777, for the subject of an *éloge*.  
M. Guibert and l'abbé Remi contended for the  
prize. It was adjudged to the latter, but he had  
the good sense not to print his work. M. Guibert  
was less prudent ; his performance appeared in  
print soon after the prize was assigned to it ; but  
though it was evidently the production of a scholar  
of Voltaire, both Voltaire, and la Harpe, his echo,  
expressed their contempt of it. The celebrated  
Condorcet afterwards entered the lists, but with  
equal want of success. In 1807, M. Bernardi pub-  
lished his “ *Essai sur la Vie, les Ecrits, et les Loix*  
*de Michel de l'Hôpital, Chancelier de France,*”  
in one volume octavo. It is written with taste and  
judgment ; and places the celebrated magistrate,  
who is the subject of it, both in an amiable and a  
respectable point of view ; but it relates more to  
his private and literary life, than his public character.  
Of that, a very good account had been given in the  
“ *Vie du Chancelier l'Hôpital,*” published by an  
anonymous French writer, in 1764. Many inte-

resting particulars of l'Hôpital are to be found in Brantôme ; and Bayle assigned to him an article in his dictionary.—From these publications, the account of the Chancellor de l'Hôpital, which we have now the honour to submit to the reader, is principally extracted.

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## CHAP. II.


*A succinct View of the Revolutions of the Jurisprudence of Europe before the time of the Chancellor de l'Hôpital.*

ONE of the most striking differences in the constitutions of the ancient and modern governments of Europe appears in the strong, and almost impassable line of demarcation, which, in the latter, separates the officers employed in the administration of justice, not only from the military, but from all the other officers of state ; and segregates, from the general body of the community, a numerous and respectable description of persons, exclusively devoted to the practice of the law, in the courts of justice. In Greece, such an order of society was little known. In the earliest days of the Roman republic, the law recognized the relation between patron and client. To give his clients aid, and to assist him with his knowledge in the courts of justice, was the duty



of the *patron*. Soon after the extinction of the republic this relation began to subside ; and, about the reign of Alexander Severus, the *civilians*, a new order of men, arose in the state, and like our modern lawyers, were exclusively employed in the practice of the law. They were divided into the *orators*, who pleaded the cause ; the *advocates*, who attended to instruct the orators on points of law ; and the *procurators*, or *cognitores*, who nearly resembled the attornies of our courts of justice. In addition to these, the *juris-consulti* gave their opinions and advice on legal questions, and resembled the *avocats consultants* of France, and our chamber council. Till the time of Augustus, every person had this liberty ; he confined it to some individuals, whom he selected ; and made a regulation, that, in future, no one should enjoy that privilege, except under the authority of the Prince. The opinions of the *juris-consulti*, called the *responsa prudentum*, were of great weight, and a considerable part of the Roman law is founded on them. Dr. Taylor, in his *Elements of the Civil Law*, finds a resemblance between the *Responsa Prudentum* and our Reports ; but there is this important distinction between them, that the mass of law, furnished by our reports, owes its authority to the decisions of the courts of law, of which it consists ; but the *responsa prudentum*, though admitted as law, were nothing more than the private opinions of individual lawyers.

this discovery. The codes, the capitularies, the formularies, and the customs, by which, till that time, the feudal nations had been governed, fell very short of affording them the legal provisions which society, in the improved state of civilization, to which it was then advancing, evidently required. Unexpectedly a system of law presented itself, which seemed to contain every thing that the wisest men of those times could have desired. The wisdom and justice of the system of law expressed in the pandects seem to have been universally felt. The study of it was immediately pursued with ardour. It was introduced into several universities ; exercises were performed, lectures read, and degrees conferred in that, as in other branches of science, and most of the nations of the continent adopted it, if not as the basis, at least as an important portion, of their civil jurisprudence. A regular *succession of civil lawyers* followed. At first they rather incumbered the text with their subtleties, than illustrated it by learning and discrimination. Andrew Alciat was the first of them who united the study of polite learning with the study of the civil laws. He was founder of a school called the Cujacian, from Cujas, the glory of civilians. Of him, it may be truly said, that he found the civil law in wood and left it in marble. Till his latter years he was pursued by envy. It is an honourable circumstance in the life of the illustrious magistrate whose life is the subject of the



sent work, that when Cujas was persecuted in  
y, he found under the patronage of l'Hôpital an  
ourable reception in France. But the mention  
this circumstance makes us feel that we have  
idered too long from the particular subject of the  
sent pages.

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### C H A P. III.

#### *Birth and early Years of l'Hôpital.*

MICHEL DE L'HÔPITAL was born in the year  
55, at Aignepers in Auvergne. John de l'Hôpital  
father, was attached, in quality of physician,  
the celebrated Connétable de Bourbon, whose  
ection from his monarch, and the important  
sequences to which it led, are related with  
much elegance by the historian of the emperor  
arles the fifth. Michel de l'Hôpital, when that  
ent happened, was a student in the civil law, in  
city of Toulouse. On his father's flight from  
ance, he was put under arrest, but was soon libe-  
ed, and even permitted to join his father. After  
king some stay with him, he went to Milan, and  
ence to Padua, to complete his studies. When he  
d completed them, he went to Rome, and was  
pointed auditor of the congregation, called the  
gregation of Rota. But he soon returned to  
ance, married the daughter of John Morin, the

lieutenant-criminal, and, in consequence of his marriage with her, obtained in 1537, a charge of counsellor in the parliament of Paris.

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#### CHAP. IV.

*State of the Parliament at Paris ; the public and private habits of its Members in the time of l'Hôpital.*

HERE, our readers must be cautioned against confounding the constitution of the parliament of France, with that of the parliament of England. The origin of each is traced to the great national assemblies of the tribes who conquered the Roman empire. In almost every country where the feudal institutions have been established, a national council under the name of States-general, Cortez, Plaida, Great Assizes, or Parliament, or under some other name, was introduced, and gradually became composed of three states, the Lords Spiritual, the Lords Temporal, and the Commons. Their functions were not only judicial, but, as their consent was necessary to give to the ordinances of the king the effect of law, they were also legislative. In the course of time, the parliament of England became divided into its two houses, the Lords and Commons, and, together with the King, constituted the Legislature of the nation : but its judicial power generally fell into disuse, except in causes which

are brought before the House of Lords by appeal. The reverse happened in almost every country on the continent; in them, the parliament gradually lost its legislative authority, and subsided into a high court of justice for the last resort, and a court of royal revenue. It generally consisted of a fixed number of ecclesiastical peers, a fixed number of lay peers, and a fixed number of counsellors. All were equally judges, and had an equal right of giving their opinions, and an equal voice in the decree.

Such was the constitution of the French Parliament when l'Hôpital was received into it. But, at that time, it had somewhat degenerated from its ancient splendor. The close of the preceding century is described by French writers as the golden era of the French magistracy. It is every where said, that the knowledge, which the members of it possessed of the law, was at once extensive and profound; that they were equally conversant in its theory and its practice; that they respected their profession; were aware of the importance of a proper discharge of their duty, and that, while their undeviating attention and gravity assured the lowest class of subjects that justice would be fully and impartially administered to them, it intimated to persons in the highest order of life, that, in the scales of justice, rank was of no account. At six o'clock in the morning, both in winter and in sum-

mer, they took their seats in court. At ten o'clock, the beadle entered the court, and announced the hour, and they retired to dine. After dinner, they returned to their seats ; at six o'clock the business of the courts was closed ; the rest of the day was devoted to their families, and literary pursuits were their only relaxation. “ To feel,” says the abbé Gédoyne, in one of his entertaining memoirs, “ that  
“ magistrates were, in those days, more addicted,  
“ than they are in our times, to professional and  
“ literary studies, it is sufficient to compare the  
“ state of Paris at that time with its present state.  
“ At the time we speak of, the police of Paris was  
“ very bad ; the city was ill built, and had not  
“ half either of the houses or the inhabitants which  
“ it now contains. The streets were ill laid out,  
“ excessively dirty, never lighted, and therefore,  
“ after dusk, very unsafe. The only public specta-  
“ cles were vulgar farces, after which the populace  
“ ran with avidity, but which all decent persons  
“ avoided. Their meals were very frugal ; there  
“ was nothing in them to attract company ; the  
“ fortunes of individuals were small, and parsimony  
“ was the only means of increasing them. A  
“ coach of any kind was hardly seen ; persons of  
“ high rank walked on foot, in galoches, or in  
“ small boots, which, when they paid a visit of  
“ ceremony, they left in the antichamber, and  
“ resumed when they quitted it. The magistrates

“ rode on mules when they went to the courts of  
“ justice or returned from them. It followed that  
“ when a magistrate, after the sittings of the court,  
“ returned to his family, he had little temptation  
“ to stir again from home. His library was neces-  
“ sarily his sole resource ; his books, his only com-  
“ pany. Speaking generally, he had studied hard  
“ at college ; and had, acquired there a taste for  
“ literature, which never forsook him. To this  
“ austere and retired life, we owe the chancellor  
“ de l'Hôpital, the president de Thou, Pasquier,  
“ Loisel, the Pithous, and many other ornaments  
“ of the magistracy. These days are passed ; and  
“ they are passed because the dissipation of Paris is  
“ extreme. Is a young man of family now destined  
“ for the law ? Before he attains his sixteenth year,  
“ a charge is obtained for him, and he sports a  
“ chariot. With such facilities of going and coming,  
“ what a wish must there be to be in every place  
“ where pleasure calls ! Consider only the time  
“ given, even by persons of decent habits of life,  
“ to music, and the opera ! What a subtraction it  
“ is from that portion of time, which the magis-  
“ trates of old gave to professional study and  
“ literature !”

## CHAP. V.

*L'Hôpital is successively appointed Counsellor of the Parliament of Paris, Ambassador to the Council of Trent, Maître des Requêtes, Superintendent of the Finances, and Chancellor of France:—First disputes between the King of France and his Parliaments:—Difference between the Office of Chancellor in France, and the Office of Chancellor in England.*

IN a poetical epistle to the cardinal de Tournon, one of his protectors, l'Hôpital describes his habits in the period of his life, during which he was counsellor of the parliament of France. He rose at a very early hour, and, in the autumnal, winter, and spring sessions, was often in the court of justice before day-break, and reluctantly rose from his seat when the beadle, at ten o'clock, announced the breaking-up of the court. He says, that he made it a rule to listen to all with patience, to interrupt no one, to express himself as concisely as possible, and to oppose unnecessary delays. He mentions, with evident satisfaction, the joy which he felt when the vacations allowed him to quit Paris, and breathe in the country. The cares of magistracy, he then banished, wholly from his thoughts, and endeavoured by harmless relaxation, to enable himself, on his return to the discharge of his functions, to resume them with fresh vigour. "But," says he, "there is nothing frivolous in my amusements: sometimes Xenophon is the companion of my walks: sometimes the divine Plato regales me



“ with the discourses of Socrates. History and  
“ poetry have their turns; but my chief delight  
“ is in the sacred writings: what comfort, what  
“ holy calm, does the meditation of them confer!”

After holding the office of counsellor of the parliament of Paris, during twelve years, l'Hôpital was appointed by Henry the second to be his ambassador at the council of Trent, which was then sitting at Bologna. By his own desire, he was soon recalled from that honourable employment, and on his return experienced, at first, some coldness from the court, but was soon restored to the royal favour, and appointed Maitre des Requêtes. In the beginning of the year 1554 he was appointed superintendent of the finances. He held this employment during six years; and it was universally acknowledged that he displayed, in the discharge of it, great talents and inflexible integrity.

This is a remarkable era in the history of France, as it was during l'Hôpital's administration of the finances that the French monarch first attempted to check that spirit of resistance to the royal will, which the parliament of Paris had for some time showed, and which at different times afterwards it exerted with so much effect, as frequently to paralyse the government, and ultimately to precipitate it into the revolution. According to the ancient forms of the French governments, the royal edicts were registered in the records of the parliament of Paris. Originally, as a matter of favour, and after-

wards, as a matter of right, the parliament claimed, and were allowed, the privilege of remonstrating against them. This often interfered with the monarch's wishes, and in times, when the government was weak, conferred much power on the parliament. Henry the second experienced its effect; and to deliver himself from it was advised to divide the members of the parliament into two distinct classes, who should sit alternately during the half of every year. The object of this measure was, to throw such of the members as were likely to prove most pliant to the royal views, into one class, and to pass all the edicts to which any resistance was apprehended, in the half year, during which that class should remain in office. This arrangement was accompanied by some salutary regulations. On that account it was patronized by l'Hôpital, and in general favourably received by the nation; but it soon became odious, and was repealed.

At the end of six years l'Hôpital was removed from the office of superintendent of the finances; he had filled it with such disinterestedness, that when he was removed from it, his situation was so little above that of honourable poverty, that he had not the means of portioning his daughter and only surviving child. The monarch kindly ~~took~~ <sup>sought</sup> in <sup>his</sup> aid, and conferred the charge of ~~the~~ <sup>the</sup> ~~office~~ <sup>office</sup> on Robert Huralt, a member ~~of the~~ <sup>of the</sup> ~~parliament~~ <sup>parliament</sup> who sought her in marriage; ~~and~~ <sup>and</sup> ~~she~~ <sup>she</sup> ~~was~~ <sup>was</sup> ~~married~~ <sup>married</sup> ~~to~~ <sup>to</sup> ~~him~~ <sup>him</sup>.

to l'Hôpital, but at a heavy rent, an estate at Vignay, near Estampes.

Not long after his daughter's marriage l'Hôpital was advanced to the rank of chancellor. This was in France, as it is in England, the highest dignity which a subject could attain ; but in the nature of those offices, as they were finally constituted in the two kingdoms, there is a considerable distinction. In both, the chancellor is the first dignitary of the state ; the guardian of his majesty's conscience, and generally has the custody of the great seal. In addition to which, the chancellor in England is, in right of the king, visitor of all hospitals and colleges of the king's foundation, is patron of all the king's livings under a certain yearly value, is general guardian of all infants and lunatics, and has the general superintendence of all the charitable foundations in the kingdom. Several of these important functions belong, in some manner, to the chancellor of France ; but over all these, the chancellor of England exercises, in a judicial capacity, a vast and extensive jurisdiction in the court of *chancery*, partly as a court of common law, but *principally* as a court of equity. The chancellor of France had no such exclusive court ; but he had the universal superintendence over all that related to the administration of justice in the kingdom ; a controlling power to correct any abuses which found their way into the courts of judicature ; to form new regulations for their proceedings, to determine

questions of jurisdiction between them, to settle differences among the members of them, to appoint the higher offices of justice, and to frame the royal ordonnances and edicts, which in anywise related to the legal polity of the kingdom, or the administration of justice. It is obvious that an office of such high dignity and extensive influence must give the distinguished personage by whom it is held, a considerable political consequence in the state.

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## CHAP. VI.

*The noble principles of the Chancellor de l'Hôpital on religious Freedom.*

THE religious troubles in France had just begun when l'Hôpital was appointed to the office of chancellor. Soon after the introduction of the doctrines of Luther into the north of Germany, the doctrines of Calvin were introduced by his followers into the south of France, and made a number of proselytes. Government was alarmed; and by a mistaken policy, the ministers of Francis the first and Henry the second attempted to restrain the further progress of them by persecution. The usual consequences of persecution followed; the favourers of the new opinions rapidly increased; the spirit of fanaticism became general, and the whole kingdom was divided into the odious distinctions of

Papist and Huguenot. The king of Navarre and the prince of Condé, were at the head of the Huguenots; the princes of Guise, an illustrious branch of the house of Lorraine, were their declared enemies.

Henry the second was succeeded by Francis the second, a weak prince, and wholly guided by his mother, the celebrated Catherine of Medicis. She threw herself into the arms of the Guises. They soon engrossed all the powers of the state; and the queen found that a defence against them was absolutely necessary. With this view she prevailed on her son to appoint l'Hôpital to the dignity of chancellor. She found the less opposition from the Guises to his appointment, as the cardinal of Lorraine had been one of the earliest patrons of l'Hôpital, and the Guises therefore naturally expected much from his gratitude; but it was not long before they found that they were not to experience from him that unbounded subserviency to their politics, which they had expected.

The earliest care of l'Hôpital after his appointment to the office of chancellor was to assemble the states-general, "The king," he said, "and his  
" subjects, ought to be acquainted. The last  
" princes of the house of Pharamond lived like  
" the last Assyrian princes, in a state of invisibility,  
" and both princes lost their kingdoms. Let those  
" who wish to engross the favour of the monarch  
" keep him aloof from his people. I wish them

“ to meet, and to meet often.” The states-general met at Orleans, and several excellent laws, formed afterwards into an ordonnance, were passed, enjoining residence to the clergy, protecting the people against the oppression of the feudal laws, and regulating the administration of justice.

One of the favourite projects of the Guises was to introduce the *Inquisition* into France. In the accounts which have been published of that tribunal there probably is some exaggeration; but, after every reasonable deduction from them is made on this supposition, enough will remain to justify our considering the inquisition as one of the greatest triumphs, which mistaken religion and sanguinary policy have ever achieved over humanity. Every candid roman-catholic makes this confession. One of the best accounts which have been published of the inquisition is the *Histoire des Inquisitions* by Marsoillier, canon of Usés, and the most eminent of French biographers. After a dispassionate examination of the proceedings of the inquisition, he concludes, that “ there is nothing so different from  
“ the spirit and conduct of the church during the  
“ thousand first years of her establishment as the  
“ proceedings of the inquisition in the countries in  
“ which it is established.” The Guises succeeded so far in their project of introducing it into France as to obtain a resolution of the royal council in its favour. In this stage of the business l'Hôpital interfered. He thought much good is obtained, when,

by permitting a small mischief a great evil is avoided. He therefore prevailed on the king to publish the edict of Romorantin, which declared that the cognizance of heretics should remain with the bishop of the diocese ; and directed the bishops to proceed in the usual manner against them. This was too great a sacrifice to intolerance ; but it gave the bishops no new power, and completely eluded the project of the inquisition. Such, however, was the general spirit of the nation against conferring any temporal power on the clergy, that it was found very difficult to prevail on the parliament to register the edict.

In his pacific views, l'Hôpital was seconded by many persons of distinction ; they formed a kind of third party, of which l'Hôpital was confessedly the head. The members of it adhered to the roman-catholic religion, but wished its discipline altered in those instances, to which the separatists from her particularly objected ; and, even on points of doctrine, recommended that decision should be delayed, as they thought the minds of men were, at that time, in too great a ferment to give a fair hearing to argument ; and that decision might therefore prevent discussions of the subjects in controversy, in times, when the people would be disposed to give them a more dispassionate consideration. In the interval, they wished that the fullest toleration should be granted to every sect. " God alone," they said, " is the judge of hearts ; he alone can discern that

“ wilful obstinacy in error, which it is proper to  
 “ punish in heretics, or that real attachment to  
 “ truth, which it is proper to reward in the faithful.  
 “ All citizens,” they said, “ who obey the laws,  
 “ and performed their duties to their country and  
 “ their neighbour, have an equal right to the advan-  
 “ tages which civil society confers ; those only de-  
 “ serve punishment who break her laws. The vir-  
 “ tuous catholic and virtuous protestant equally  
 “ deserve the protection and rewards of law ; the  
 “ wicked catholic and wicked protestant are equally  
 “ deserving of legal punishment. The intolerance  
 “ which makes us look with an evil eye on those  
 “ who hold religious opinions, different from our  
 “ own, is a principle destructive of virtue. It cer-  
 “ tainly is very desirable that no cause whatever of  
 “ division should exist among the citizens of the  
 “ state, and of course, that there should be no here-  
 “ tics. But to bring back heretics to the fold,  
 “ charity, patience, and prayer, are the only arms  
 “ which the Divine Founder of our religion, him-  
 “ self used to draw nations to him. The thunder  
 “ of heaven was at his command, but he refused it  
 “ to the prayer of the two unwise disciples who  
 “ wished it hurled on the unbelieving Samaritans.”  
 Such, we learn from the biographers of l'Hôpital,  
 was his constant language. Such too, is the lan-  
 guage of that admirable preface, prefixed by his  
 friend, the president de Thou, to his Universal  
 History, which lord Mansfield, in his celebrated



speech in the case of the chamberlain of London against Mr. Allen Evans, declared he never read without admiration. L'Hôpital acted up to his principles ; from his elevation to the office of chancellor till the moment when the seals were taken from him, he laboured incessantly in the glorious cause of religious toleration. As it usually happened, he offended the zealots of each party ; but he persevered : and though he met with great opposition, his efforts were not wholly without success. Through his influence, many edicts were procured which protected the lives and fortunes of protestants, and ensured to them, under certain restrictions, the free exercise of their religion. On one occasion, when it was agitated in council, whether war should be declared against the huguenots, and l'Hôpital spoke against it with much eloquence, " It does not," " the connétable de Montmorency said to him, " become you, gentlemen of the long robe, to give " your opinions on matters of war." " It is true," replied l'Hôpital, " that we are ignorant of the art " of war ; yet we may know when it is wise or " prudent to declare it." But, while l'Hôpital protected the huguenots against oppression ; he blamed their occasional indiscretions and excesses, and that republican spirit, with which, in his, *Avis aux Réfugiés*, they were afterwards reproached by Bayle.

## CHAP. VII.

*The Chancellor de l'Hôpital puts into practice his Principles of religious Freedom, in his public conduct in regard to the French Huguenots.—Its salutary effects.*

A SHORT account of the *Edicts of Pacification*, as they are called by the French historians of those times, will show the address and wisdom of l'Hôpital's counsels in favour of religious freedom, and their good effect. (*Daniel, Hist. de France, An. 1561, 1562, 1563, Esprit de la Ligue, liv. I. II.*) In the beginning of the year 1561 an edict was published, by his advice, by which the king directed that all persons, who had been imprisoned for their religion, should be set free; and enjoined all the magistrates of his kingdom to restore, to the lawful proprietors, all the real and personal property of which they had been deprived in consequence of their religious principles. He exhorted all his subjects to conform to the rites and usages of the national church, and inflicted the penalty of death on all, who, under the pretence of supporting the interests of religion, should disturb the public tranquillity.

Finding this ordonnance was not a sufficient protection to the calvinists, his majesty, in the following April, caused another ordonnance to be promulgated by which he revived all the salutary provisions of the former edict, and forbade all his subjects to revile one another with the odious appellation of

papist and huguenot ; he forbade them to assemble in bodies, or to make domiciliary visits, under the pretence of discovering religious practices contrary to law ; and he recalled to the kingdom all who had been forced to quit it in consequence of any law against the calvinists, and who were willing to conform externally to the catholic religion. Those who would not submit to those regulations, had liberty to sell their property, and quit the kingdom.

People were divided in their sentiments on these edicts :—To tranquillize the public mind on them, l'Hôpital prevailed on the king, to refer them to the parliament of Paris. The meeting was held in July 1562, and was very solemn : the king, the queen-mother, and the principal nobility attended it. The chancellor opened the assembly by a wise and conciliatory discourse : “ We are not met,” he said, “ to  
“ discuss points of doctrine. The only subject of our  
“ discussion is, what are the best means of prevent-  
“ ing the dissensions, which the difference of re-  
“ ligious opinion occasions in the state ; and to put  
“ an end to the licentiousness and rebellion of which  
“ it hath hitherto proved a continued source.” The assembly was split into three parties : the first party contended that the edicts against the protestants should be wholly suspended till a national council should be called ; the second contended that all huguenots should be capitally punished ; and the third contended that the cognizance of heresy should

be assigned to the bishops, and that a severe punishment, but short of death, should be enacted against huguenots who should assemble, even peaceably, for their religious worship. The second of these opinions had very few votes : the chancellor strenuously supported the first ; but the third opinion was carried against him by a majority of three votes. He contended that, on such a question, so small a majority was a defeat ; and that no one could say that it did not make further deliberation necessary. But the partisans of the measure declared that it was regularly carried, and pressed for its execution.

L'Hôpital, however, was steady in his views. The queen-mother, by his advice, addressed to the pope a letter, strongly pointing out the expediency of conciliatory measures ; she entreated him to look with compassion on those who had the misfortune of being separated from him on religious points. “ They are not,” said the queen, “ the anabaptists  
“ of Munster, or libertines ; they believe the twelve  
“ articles of the creed. Many persons of piety  
“ think that, in condescension to their weakness,  
“ they should be permitted to have churches without  
“ images ; to admit some ceremonies in the adminis-  
“ tration of the sacraments ; to communicate under  
“ both kinds ; to celebrate the divine service in the  
“ language of the country ; and all this, they say,  
“ may be done, without any innovation in the doc-  
“ trine of the church or its hierarchy, and without

“ any want of submission to the sovereign pontiff.” But the suggestions of the queen-mother were not attended to by the pope.

The chancellor's next measure was to prevail on the king to call an assembly of the notâbles. It consisted of the principal officers of state, deputies from every parliament of the kingdom, and many of the most respectable magistrates. The assembly met in January 1562. The chancellor addressed the members of it in a speech of great good sense and eloquence. He called their attention to the actual state of the calvinists, their number and strength. He showed the injustice and impolicy of those, who wished the king to put himself at the head of one party of his subjects, and to establish peace by the destruction of the other. “ In such a war, where is the king to find his soldiers? Among his subjects. Against whom is he to lead them? Against his subjects. A triumph and a defeat is equally the destruction of his subjects. I abandon to theologians, controversies on religion; our business is not to establish articles of faith, but to regulate the state. Without being a catholic, a person may be a good subject. I see no reason why one is not to live in peace with those, who do not observe the same religious ceremonies as ourselves.” The majority of voices was in favour of toleration; and the king published an edict in the following January, which ordered the huguenots to restore

to the catholics the churches and other property which they had taken from them; and, on that condition, gave the huguenots ample toleration, except that it prohibited their holding their assemblies within the precincts of any walled town. The public mind, however, was in too great a ferment to be immediately tranquillized by the provisions, however wise or salutary, of this edict: and, soon after its promulgation, an event, called by the French historians the massacre of Vassy, (the particulars of which are foreign to the subject of these pages), took place, which threw the parties into open civil war; but, by the incessant exertion of l'Hôpital, peace was made between them; and the ground of it was, an edict of the month of March in the same year, by which almost a general liberty of holding their religious assemblies in any place they should think proper was conferred on the calvinists; and they were declared to be good subjects to his majesty,

Such were the salutary effects of toleration, that the political adventurers among the leaders of the calvinists could not conceal the vexation which this edict gave them. “This single stroke of a pen,” they said, “is the ruin of more of our churches than armies would have destroyed in ten years.”

The salutary effects of the edict were immediately observed. The insurgents returned to their duty, and catholics and protestants vied in demonstrations of loyalty to their royal master, and in

zeal for his service. The English having taken the town of Hâvre, the king and queen-mother proceeded in person to the siege. They were received with acclamations of joy. On one occasion, the chancellor remarked to them the ardour and bravery of the troops in mounting a breach :—" Which  
" of them," he asked the monarch, " are your  
" catholic, which your protestant subjects? Which  
" among the troops whom you behold are your  
" bravest soldiers, your best servants? All are  
" equally brave and good. This is the effect of  
" the edict, so much blamed by some! See how it  
" re-unites the royal family; restores to us our brothers, our relations and friends; it leads us out, hand in hand, against our common enemy; and makes him feel how respectable we are for virtue and power, when united among ourselves."

The triumph of l'Hôpital was now complete: but some years after this event, the troubles of France again broke out. The history of them does not belong to these pages. After thirty-five years of civil war, with all its horrors, the edict of Nantes in 1598, restored peace to the distracted nation; and the catholics remarked that the terms of it were much more favourable to the calvinists than those given to them by the edict of March 1563, for which l'Hôpital had been so greatly blamed.

## CHAP. VIII.

*The Chancellor de l'Hôpital opposes the reception of the Council of Trent in France.*

**A**N important event in the public life of l'Hôpital is the opposition which he gave to the reception of the *Council of Trent* in France.—The leading distinction between protestants and catholics is, that, in matters of religion, the protestant acknowledges no law but that of the scriptures, no interpreter, but his own conscience; the catholic acknowledges the scriptures, and, in addition to them, a body of traditionary law, and receives both scripture and tradition under the authority and with the interpretation of the church. It follows, that in all matters of doubt the catholics refer the question to the church; and generally, in concerns of moment, the pastors of the church assemble to consult and decide upon them. When only the pastors of a particular territory assemble, the assembly, as the case happens, is called a *provincial*, or a *national council*; when all the pastors of Christendom are summoned to it, it is called a *general or œcumenical council*.

In an early stage of the reformation, the expediency of assembling such a council was sensibly felt. After many delays it was assembled in 1543.



at Trent, a town on the confines of Germany, but did not hold its first sitting till the beginning of the year 1546. From Trent it was transferred to Bologna, but returned to Trent; and, with several interruptions, continued its sittings in that city till its conclusion in 1564. All its doctrinal decisions have been received, without any qualification, by every catholic state of Christendom; but several states objected to some of its decisions in matters of discipline. It met no where with more resistance than in France. L'Hôpital was at the head of those, who opposed the unqualified acceptance of it. He thought, that in some matters of discipline, greater concessions should be made to protestants; that in other points of discipline, the decrees of the council trenched on the acknowledged liberties and privileges of the church of France; and that in some there was an express, and in others an implied, admission of the right of the church to temporal power. The most strenuous and powerful advocate for its reception was the cardinal of Lorraine; and warm discussions upon it took place between him and l'Hôpital. One of the grounds on which the latter objected to its reception was that it would irritate the huguenots, and probably produce a civil war. The cardinal appearing not to be struck with this objection, l'Hôpital pointed out to him, with great eloquence, the horrors of the late wars: "Are we," he boldly asked the purpled prelate, "to be indifferent to these scenes of carnage and

“ blood ? Are we to consider them as trifles ? If  
“ all who advise measures leading to war were them-  
“ selves obliged to fight in the ranks, the advocates  
“ of war would not be numerous.” His opinion  
partially prevailed. In all doctrinal points, the  
authority of the council was admitted in France,  
universally and without any qualification ; in matters  
of mere ecclesiastical discipline, it bends occasion-  
ally to the discipline of the church of France ; where  
it affects temporal power, it has no weight.

In the different atmospheres of Venice and Rome,  
the history of the Council of Trent has been written  
by the celebrated Fra. Paolo, (the translation of  
whose work, with notes, by Dr. Courayer, is more  
valued than the original,) and by cardinal Pallavicini.  
The cardinal does not dissemble that some  
of the deliberations of the council were attended  
with intrigues and passion, and that their effects  
were visible in various incidents of the council ;  
but he contends that there was an unanimity in all  
points which related to doctrine, or the reformation  
of manners ; and Dr. Courayer, in the preface to  
his translation, concedes that, “ in what regarded  
“ discipline, several excellent regulations were  
“ made, according to the ancient spirit of the  
“ church ;” and observes, that “ though all the  
“ disorders were not reformed by the council, yet,  
“ if we set aside prejudice, we may with truth  
“ acknowledge, they are infinitely less than they  
“ were before.” The classical purity and severe

simplicity of the style in which the decrees of the council are expressed are universally admired.

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## CHAP. IX.

*The Chancellor de l'Hôpital wishes to abolish the Venality of Law Offices in France.*

ONE of the objects of l'Hôpital was to establish a speedy and cheap administration of justice. With this view he laboured, but without success, to effect the repeal of the laws, which allowed the sale of offices, or, as it is technically termed, the venality of charges.—An Englishman will hear with surprise, that in France, from the age of Lewis the twelfth, to the time of the revolution, offices of justice were both hereditary and saleable; he will hear, with greater surprise, that this was a point, on which respectable opinions were divided at the first, and continued divided to the last.

In 1467, offices which to that time had been simple commissions, revocable at the king's pleasure, were by an edict of Lewis the eleventh rendered perpetual and hereditary. This edict gave rise both to the heirship and the sale of offices. In 1493, Charles the eighth published an edict, which, while it prohibited the sale, by one subject to another, of offices that regarded the administration of justice, was silent on the sale of other offices, and was therefore supposed to legalize their sale. An edict of

Lewis the twelfth allowed the sale even of offices of justice. Till 1522, the whole of the money paid for the purchase of offices was received by the crown ; but in that year an edict of Francis the first permitted the individuals, possessed of such offices, to sell them, on paying a certain proportion of the purchase-money into the royal treasury ; and from that time, venality of offices became an important article of the French constitution. In the course of time, it underwent many modifications. For several centuries before the French revolution it was conducted on the following plan.—When the king established a new court of justice, the edict of its creation fixed the number of the magistrates or judges, and the specific sums to be paid by them for grants of the offices which they should fill. The candidates petitioned the king for them ; the grants of them were made by letters under the great seal ; and, from that time, the offices were hereditary in the family of the grantee. Where a court was already established, the possessor of any of the offices of which it was composed, might in his life-time, and his heirs might, after his decease, dispose of it by sale ; or he might direct by will that it should be sold. When the sale of an office took place, the purchaser petitioned the crown for a grant of it ; and, when the grant was signed, he paid, besides the price which the vendor was to receive for it, a sum of money into the royal treasury. The amount of that sum varied from

one thousand to two thousand French crowns. The sum, which he paid into the royal treasury, was on a subsequent sale of the office returned to him or his heirs. Thus the purchaser of an office virtually paid for it no more than the accruing interest of the purchase-money from the time of its payment till the return of it on a re-sale. But great care was exerted to ascertain that the person, to whom the office was granted, should be properly qualified for the discharge of its duties. It was always required that he should have taken the degree of licentiate both in the civil and the canon law ; and the taking of such a degree, in a French university, was far from being a matter of course. As soon as the grant of the office was delivered to the purchaser, he presented it to the tribunal to which the office belonged, with a petition, stating generally his qualifications, and expressly averring that the money, which he had paid for the office, was his own money, and had not been borrowed by him for the purpose. Then a commission issued, composed of lay and ecclesiastical lawyers and other persons of condition, who were to inquire and report upon the purchaser's learning, morals and political conduct. The procureur-general of the parliament, within whose resort the office lay, presided over the commission. If the inquiry was favourable to the purchaser, they chose, out of the digest or code, some point of law, upon which, at the end of eight days, he was to come prepared with complete

legal information; and he was also then expected to answer, with general sufficiency, on the civil and canon law, and on the ordonnances and customary law of the country. Sometimes he was declared incapable of the office; sometimes a term for further probation was allowed him. Till the middle of the last century these examinations were conducted with great strictness. Sometimes the chancellor himself examined the persons appointed to offices, on their competency. "One day," says Brantôme, "I called on M. le chancelier de l'Hôpital, with Mareschal Strozzi, who was among his favourites, and he invited us to dine. For our dinner he gave us an excellent boullie, and nothing more; but his conversation was excellent; fine words, fine sentences in abundance, and now and then a gentle joke. After dinner, a couple of counsellors, just chosen into their offices, were announced; he ordered them in, and, without desiring them to sit down, called for the code, and questioned the two gentlemen, who were trembling all the while as a leaf, on different articles in it. Their answers did not show much knowledge; and he gave them such a lecture! Though the youngest of them was fifty years old, he sent them back to their studies. Strozzi and I stood by the fire-side highly diverted with the scene, and particularly with the rueful countenances of the two magistrates; they had all the appearance of men going to be hanged.

“ At length the chancellor packed them off with  
“ a frown ; and assured them that he would in-  
“ form the king how ignorant they were, and  
“ would see that their charges should be given to  
“ others. As soon as they were out of hearing  
“ he told us they were two great asses ; and that  
“ it was against conscience that the king should  
“ name such persons for judges. We suggested  
“ to him that the game which he had offered them  
“ was too strong for their palates. Far from it,  
“ said the chancellor ; I questioned them on no  
“ point, on which a tyro in the law should not be  
“ fully informed.”

It should be added, that, in general, the magistrates were chosen from families of great respectability, and of a fortune which placed them considerably above want. No one was admitted into the parliament of Brittany who could not prove that he was noble by race and extraction, or in other words, who could not prove a century of nobility in his family.

The advocates for the venality of offices of justice are proud to reckon among them the cardinal de Richelieu and Montesquieu. “ The venality of  
“ charges,” says the latter, (*Esprit des Loix*, l. v. c. 19.), “ cannot exist in despotic states ; as  
“ it is essential to despotism, that every officer should  
“ be liable to be instantaneously placed, and instan-  
“ taneously displaced, at the mere will of the prince.  
“ It is proper for monarchies, as it makes the study  
“ of the law a kind of qualification, which otherwise

“ the party would not be at the pains of acquiring  
“ for a family dignity. It gives an early direction  
“ to duty ; and tends to confer permanence on an  
“ order of great public use in the state. It is a  
“ just observation of Suidas,” continues Montes-  
quieu, “ that, by the sale of offices, the emperor  
“ Anastasius converted the empire into an aristo-  
“ cracy : Plato could not endure it. He declares  
“ that it is the same, as if persons on ship-board  
“ should choose a pilot for money. But Plato is  
“ speaking of a republic, the basis of which is  
“ virtue ; we are speaking of a monarchy. There,  
“ if the sale of the offices were not allowed by law,  
“ the greediness and avarice of the courtiers would,  
“ in spite of the law, make them saleable. As the  
“ sales of them are now regulated by our laws, the  
“ chance of having them properly filled is greater  
“ than if the nomination of them depended on the  
“ mere will of the courtiers. Finally, such a  
“ method of advancing one’s self by wealth, both  
“ inspires and sustains industry ; and, in a mo-  
“ narchy, every thing which incites noble families  
“ to industry is to be encouraged.” These obser-  
vations are excellent ; but the intelligent reader  
will immediately perceive, that little of what is  
urged in them for the venality of charges in France  
can be applied to the venality of them in England.  
A reflection, highly honourable both to the wisdom  
and purity of the English constitution, will perhaps  
here suggest itself to him.



## CHAP. X.

*The Chancellor l'Hôpital wishes to abolish the Épiques.*

**A**NOTHER reformation in the administration of justice, which l'Hôpital wished to effect, was the abolition of the *épiques*, or presents made, on some occasions, by the parties in a cause, to the judges by whom it was tried.

A passage in Homer, (24 Il.), where he describes a compartment in the shield of Achilles, in which two talents of gold were placed between two judges, as the reward of the best speaker, is generally cited to prove, that even in the earliest times, the judges were paid for their administration of justice: but an attentive reader will probably agree with Mr. Mitford in his construction of this passage, that the two talents were not the reward of the judge who should give the best opinion, but the subject of the dispute, and were to be adjudged to him, who established his title to them by the best arguments.—Plutarch mentions, that, under the administration of Pericles, the Athenian magistrates were first authorized to require a remuneration from the suitors of their courts. In ancient Rome, the magistrates were wholly paid by the public; but Justinian allowed some magistrates of an inferior description to receive presents, which he limited to a certain amount, from the suitors before

them. Montesquieu (*Esprit des Loix*, l. xxviii. ch. 35), observes, that “ in the early ages of the  
“ feudal law, when legal proceedings were short  
“ and simple, the lord defrayed the whole expense  
“ of the administration of justice in his court. In  
“ proportion as society became refined, a more com-  
“ plex administration of justice became necessary;  
“ and it was considered that not only the party who  
“ was cast, should, on account of his having insti-  
“ tuted a bad cause, but that the successful party  
“ should, on account of the benefit which he had  
“ derived from the proceedings of the court, con-  
“ tribute, in some degree, to the expenses attend-  
“ ing them; and that the public, on account of  
“ the general benefit which it derived from the  
“ administration of justice, should make up the  
“ deficiency.” To secure to the judges the pro-  
portion which the suitors were to contribute  
towards the expense of justice, it was provided,  
by an ordonnance of St. Louis, that, at the com-  
mencement of a suit, each party should deposit in  
court, the amount of one-tenth part of the property  
in dispute: that the tenth deposited by the unsuc-  
cessful party should be paid over to the judges on  
their passing sentence; and that the tenth of the  
successful party should then be returned to him.  
This was varied by subsequent ordonnances. Insen-  
sibly it became a custom for the successful party to  
wait on the judges, after sentence was passed, and,  
as an acknowledgment of their attention to the

cause, to present them with a box of sweetmeats, which were then called *épices*, or spices. By degrees, this custom became a legal perquisite of the judges; and it was converted into a present of money, and required by the judges before the cause came to hearing:—*Non deliberetur donec solventur species*, say some of the ancient registers of the parliaments of France. That practice was afterwards abolished; the amount of the *épices* was regulated; and, in many cases, the taking of them was absolutely forbidden. Speaking generally, they were not payable till final judgment; and, if the matter were not heard in court, but referred to a judge for him to hear, and report to the court upon it, he was entitled to a proportion only of the *épices*, and the other judges were entitled to no part of them. Those among the magistrates, who were most punctual and diligent in their attendance in court, and the discharge of their duty, had most causes referred to them, and were therefore richest in *épices*; but the superior amount of them, however it might prove their superior exertions, added little to their fortune, as it did not often exceed 50 *l.* and never 100 *l.* a year. The judges had some other perquisites, and also some remuneration from government; but the whole of the perquisites and remuneration of any judge, except those of the presidents, amounted to little more than the *épices*. The presidents of the parliament had a higher remuneration: but the price which they paid for their

offices was proportionably higher; and the whole amount, received by any judge for his *épices*, perquisites, and other remunerations, fell short of the interest of the money which he paid for the charge; so that it is generally true, that the French judges administered justice, not only without salary, but even with some pecuniary loss. Their real remuneration was the rank and consideration which their office gave them in society, and the respect and regard of their fellow-citizens. How well does this illustrate Montesquieu's aphorism, that the principle of the French monarchy was honour! It may be truly said, that the world has not produced a more learned, enlightened, or honourable order in society, than the French magistracy.

Englishmen are much scandalized when they are informed that the *French judges were personally solicited* by the suitors in court, their families and protectors, and by any other person whom the suitors thought likely to influence the decision of the cause in their favour. But it all amounted to nothing:—To all these solicitations the judges listened with equal external reverence, and internal indifference; and they availed themselves of the first moment when it could be done with decency, to bow the parties respectfully out of the room:—it was a *corvée* on their time which they most bitterly lamented.

## C H A P. XI.

*The Chancellor de l'Hôpital supports the Independence of the French Bar.*

L'HÔPITAL anxiously strove to exalt the character of the profession of the law in public estimation. In Rome, the practice of the law was at first honorary ; it became afterwards an object of gain. During the second Punic war, the Cincian law was passed, to revive the primitive custom of *honorary advocacy*. But it was so often evaded, that the emperor Claudius thought it more advisable to moderate, than to attempt to destroy entirely, the salaries or emoluments of advocates. He accordingly inhibited them from taking a larger fee than two sesterces ; about 80 *l.* 14 *s.* 7 *d.* English. The advocates, however, thought it an indignity that their fees should be considered as wages, and therefore dignified them by the honourable title of presents, or gratuities ; but, as they might demand, and even recover them by action, the distinction was merely nominal. In England, fees of council always were, in the strictest sense of the word, honorary. Till the time of l'Hôpital, it was not settled whether the fees of the French advocates were honorary ; but, in his time, the honorary quality of them was completely recognized. Attempts, the reason of which does not appear, were made at different times, both by the government

and the parliaments of France, to oblige the advocates to sign receipts for their fees ; and it was expressly enjoined by the ordonnance of Blois. In 1602, the parliament of Paris issued an arrêt, enforcing the observance of that ordonnance. It gave the advocates so much offence, that three hundred of them immediately renounced the profession with the regular formalities. This put a total stop to the proceedings of the courts of justice, and the parliament submitted. In the contest in 1775, between the order of advocates and M. Linguët, one of the charges against him was, that he had written to the duke d'Aguillon to demand his fees, had threatened him with an action for them, and had allowed his demand on the duke to be referred to arbitration.

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## CHAP. XII.

*The Chancellor de l'Hôpital was unfavourable to the extension of Law by too great a latitude in the interpretation of it ;—to allowing Interest on pecuniary Loans ;—favoured Sumptuary Laws ;—the erection of Commercial Tribunals, and Public Schools for the Education of Youth ;—was equally zealous for the Rights of the Crown and the Rights of the Subject, according to the true Constitution of the French Monarchy.*

L'HÔPITAL was a declared enemy of the *latitude* of legal interpretation, in which the parliaments of France, (the reader will carry in mind, that we consider them only as courts of judicature), too

frequently indulged themselves. It was of two sorts : Sometimes they signified their interpretation of law by arrêts, a species of judicial edict, having the effect of law within the jurisdiction of the parliament by which it was issued. To this kind of semi-legislative interpretation of law, nothing in England bears any resemblance. On other occasions, the French parliaments interpreted the law, as it is generally done in courts of justice, by decisions on dubious points of law. Their interpretation of it by arrêts was frequently censured, as amounting in effect to an act of legislation ; they were also reproached with carrying interpretation too far, in their decisions. In the redaction of the Code Civil Napoleon this was a subject of much discussion. It gave rise to the 5th article of the preliminary title, “ on the publication and effects “ and application of the laws.” The existence and extent of the mischief was admitted ; as a remedy, some proposed an article, expressing, “ that “ the judges should be forbidden to interpret the law “ by general and reglementary dispositions.” To that, others objected, on the ground, that all interpretation of law was prohibited to judges, according to the maxim of the civil law, *imperatoris est interpretari legem*. To this, it was replied, that there were two sorts of interpretation, one of legislation, the other of doctrine ; that the first was prohibited to the judges, but that the second was essential to their office. The result of the discussion was, that

as the two sorts of interpretation were not easily distinguishable, it was better to omit the word interpretation from the article. It stands therefore in these words, "It is forbidden to the judge to pronounce, by way of general and reglementary disposition on the causes which come before them:—  
" Il est defendu au juges, de prononcer par voie  
" du disposition generale et reglementaire, sur les  
" causes qui leur sont soumises." If the language of this article do not convey a clearer meaning to a French, than it does to an English, lawyer, the French tribunals, when this article shall come under their consideration, will probably wish that an interpretative clause had been subjoined to it.—That the right of interpretation should be vested in judges no reasonable person can deny; but to what extent it should be allowed, or, in other words, to ascertain the exact point, where judicial interpretation should stop, and legislative interpretation be called in, is a question of extreme difficulty. An English lawyer will perhaps admit, without any hesitation, that the decision of our courts, that after-purchased estates shall not pass by a previous devise, was an exposition of the meaning of the word "having," in the statute of wills, which the courts were allowed to make, by the strictest rules of judicial interpretation; but he will, at least doubt, whether the preservation of uses, under the application of trusts, both against the words and against the spirit of the statute of uses, was not a sub-



ject more proper for legislative than judicial provision.

It was a favourite plan of l'Hôpital that all commercial disputes should be settled by a summary process, in which process the ordinary rules of evidence might be dispensed with, and the judges should decide on a statement of the facts, brought before them by the parties themselves. With this view he procured the establishment of *consular tribunals* in the chief maritime towns in France. Justice was to be administered by them, in commercial causes, arising within their jurisdiction, by a brief and summary proceeding. They were found a useful institution, and were, at all times greatly favoured by the government. It is a little remarkable that the code de commerce is, of all the codes Napoleon, the most complex.

He wished for *sumptuary laws*; and thought the taking of interest for money lent should be prohibited by law. It is surprising how long the universal opinion, even of enlightened persons, was against both the expediency and moral lawfulness of receiving interest on a loan of money. Even in M. Bernardi's *éloge* of l'Hôpital, published so lately as the year 1807, it is condemned: probably M. Bernardi, when he composed it, had not read Mr. Bentham's admirable *Letters on Usury*.

L'Hôpital did all in his power to improve the national education of youth. On that account, he favoured the legal establishments of the jesuits in

France, and checked the opposition of the parliament of Paris to that measure.

Such were l'Hôpital's general views respecting the administration of justice.—His loyalty to his sovereign knew no reserve. For the French constitution, an absolute monarchy, with many checks on the monarch's abuse of his power, from general opinion, from established forms, and from intermediate authorities of great weight and influence in the state, he had the highest veneration, and used all means in his power for its preservation. On the one hand, he withheld the princes of the blood royal, and the princes of the house of Lorraine, and of other leading families, from encroaching on the just prerogatives of the crown, or forcing from the crown improvident grants; he repressed the attempts of the governors of the provinces to exercise the powers of royalty within their governments, and checked the parliaments in their unconstitutional resistance to the crown: On the other, he favoured the frequent calling of the states, and caused many laws to be passed that were favourable to the rights and liberties of the subject. Such in particular is the article in the ordonnance of Moulins, which enjoined “the parliaments, while a cause was pending before them, to pay no regard to any intimation upon it from the monarch, though it were even contained in a letter, addressed by the monarch himself, to them.”

## CHAP. XIII.

*The Chancellor de l'Hôpital resigns the Seals: His last Years; his Will; his Death; his Works; his Character by Brémontôme, and the President Hénaut.*

WE have endeavoured to present our readers with a short view of the leading principles by which l'Hôpital was guided in the discharge of his high office; it remains to mention his fall from power. We have said, that he resisted the cardinal of Lorraine on the great question of the reception of the council of Trent in France, and that his resistance was successful. This was never forgiven by the house of Guise: the princes of it determined on the chancellor's removal; but he was so much esteemed and loved by the king, the queen-mother, and the great body of the nation, that the Guises did not venture to take the seals from him; and therefore, by their continual opposition to his measures, compelled him to resign them. He then retired to his country house at Vignay.

He had always cultivated the muses: several of his poetical epistles have reached us. Considering them as literary compositions, their unpretending simplicity is their greatest merit: but they show such real dignity of character, they breathe so pure a spirit of virtue, and are full of such excellent sen-

timents of public and private worth, that they will always be read with pleasure.

They are particularly remarkable for the perfect lessons to be found in them of complete religious toleration, and it adds much to their merit in this respect, that, in those days, religious toleration was a virtue very little known—"It is a folly," l'Hôpital observes in one of them (lib. vi. p. 290), "to suppose, that you can destroy by force, the divisions which subsist among us. You may put to death some of the innovators; the consequence will only be, that the land, fertilized by their blood, will produce a thousand others. You may prevent them, for a time, from assembling in their temples; but, by thus concentrating the fire, you only give it more activity, when it finds a vent: an explosion must take place, and a general conflagration, the flames of which may touch the very skies, will then ensue. This kind of remedy does not suit the evils, under which we labour. Does not the founder of our religion enjoin us to love peace, to refrain from violence? Did he ever intimidate any one by acts of violence? Did he not constantly endeavour to gain hearts to him by the meekness of his words? What can the sword do to the mind? It may force the tongue to be silent, or perhaps to utter untruth; but the internal sentiment will remain, and, when the danger is over, will burst forth with double force."

He blamed both parties :—" The huguenots," he says, " have defiled the sanctuary with the blood of priests; they have violated the tombs of the dead. But have the catholics been guilty of no crime?—War, cruel war, has perverted every heart. The fear of God has disappeared from the world; yet every army professes to fight for his cause!"

From these scenes of blood and carnage, his muse often fled.—" Health," he exclaims in another epistle, " health to the dear friends, who, quitting the roads to great towns and splendid castles, come to visit me in my humble retreat. The luxury, the amusements of the capital, they don't expect to meet with there; the smallness of my fields does not enable me to treat them sumptuously.—But, all I have, they may all command." He proceeds to boast of " his sheep, his lambs, his milk, his fruit, his nuts, and his wine, made under his wife's own care; the hares they might hunt, the birds they might shoot." He hints to them, however, that the situation of the domain, to which he invites them, was not very beautiful: he tells them that they were not to look for extensive prospects, or even for a crystal stream; all his water, he says, comes from a well.—But, " Spartam, quam nactus sis, orna;—Sparta has fallen to my lot, and I must make the best of her."

His expressions on his fall from power are those

of dignity and conscious rectitude. “ No ! my  
“ dear friend,” thus he writes to the president de  
Thou, “ I am not conquered ! I have withdrawn  
“ from the administration of the public concerns ;  
“ but I did not give up my post through cowardice.  
“ As long as I could be of any use to my king or  
“ country, no danger alarmed me ; I endured every  
“ thing. But abandoned by all, both the king and  
“ the queen-mother being terrified from the sup-  
“ port of me, I retired, with a sigh for my unhappy  
“ country. How contentedly should I die, if I  
“ could behold my king restored to his just prer-  
“ gatives, and peace and liberty restored to my  
“ fellow subjects ! My own career draws to its end,  
“ my tenth lustre verges to its close. The world  
“ to come should now be my only care.” He speaks  
of his general conduct in life with modesty, and  
appeals, with confidence, to the judgment of it by  
posterity ; yet he wishes it better known, what  
violence he had to combat, what artifices to contend  
with. “ If those were fully known, it would be  
“ wondered that I was not sooner overpowered.”  
He rejoices that he had persevered to the end.

He foresaw that the peace, which preceded the  
massacre on St. Bartholomew's day, would not  
be of long duration. He narrowly escaped being  
among its victims. One of the few circumstances  
in the life of Charles the ninth, which can be  
related with any praise, is the attachment which  
he shewed to l'Hôpital. During the massacre on

St. Bartholomew's-day, he sent a troop of horse to protect l'Hôpital from outrage ; and in the last illness of l'Hôpital, he and the queen-mother sent him a message of great kindness, with an assurance that they would provide for his grand-children.

L'Hôpital survived his retirement from office about four years ; and the massacre of St. Bartholomew's-day some months. That horrid event embittered all his hours : “ I have lived,” he says, in a letter written soon after it, “ I have lived too long ! “ I have seen, what I could not have believed, a “ young prince of an excellent natural character, “ change, in a moment, from a mild king to a “ ferocious tyrant. Those were not the manners “ of the ancient kings : they were too fond of war ; “ but they made it openly. No prospect of advantage would have induced them to break a peace, “ which they had solemnly sworn to observe. But “ we have been corrupted by our neighbours ; our “ manners are changed.”

The office of chancellor had not added to his fortune. The small provision, which he should leave behind him for his grand-children, afflicted his last moments. He was sensible of the kind assurances which he received from the king and queen-mother ; but he foresaw, that, if they had the will, the circumstances of the times would deprive them of the means of giving them effect.

In the life of the connétable de Montmorency,

Brantôme inserts the *Will of l'Hôpital*: It is very interesting.

It contains a short statement of the principal events of his life. He particularly mentions his appointment to the office of chancellor: "I soon found," he proceeds, "that I had to do with persons as enterprising as they were powerful, who preferred violence to council and prudence. They almost displaced the queen from the administration of government; and they forced the king of Navarre into a war. It was ever my opinion, that nothing is so destructive to a state as a civil war; and that peace, almost on any terms, is preferable to it. The advocates for war stirred up all ranks against me;—nobility, princes, magistrates and judges; and by their cabals prevailed over me. Thus they ruined the king and kingdom. We saw, what I cannot mention without tears, foreign soldiers sporting with our lives and property, while those, who should have been the first to defend us against them, were the first to lead them on. Finding I had no longer the means of resisting them, I retired. My last prayer to the king and queen-mother was, that, since they had resolved to break the peace, and to make war on those, with whom, but a short time before, they were concerting measures of peace, they would, when the first thirst for carnage and blood was satisfied, and before the state was brought to the



“ last stage of ruin, embrace the earliest occasion  
“ that offered of making peace. It broke my heart  
“ to see the young king and his brothers taken from  
“ me, when they most stood in need of my councils.  
“ I take God and his angels to witness, that nothing  
“ has been so dear to me as my king and country.  
“ The good of religion served as a pretence for my  
“ removal; its real cause was, that those whose cabals  
“ removed me, felt, that, so long as I remained in  
“ office, I would not permit the king's edicts to be  
“ trifled with, his finances to be dilapidated, or the  
“ fortunes of his subjects to be plundered.” He  
then proceeds to dispose of his property, not only to

“ L'Hôpital,” says Brantôme, was the “ greatest,  
“ worthiest, and most learned chancellor, that was  
“ ever known in France. His large white beard,  
“ pale countenance, austere manner, made all who  
“ saw him think they beheld a true portrait of St.  
“ Jerome; he was called St. Jerome by the cour-  
“ tiers. All orders of men feared him; particularly  
“ the members of the courts of justice; and, when  
“ he examined them on their lives, their discharge  
“ of their duties, their capacities or their knowledge,  
“ and particularly, when he examined candidates  
“ for offices, and found them deficient, he made  
“ them feel it.”

“ He was profoundly versed in polite learning,  
“ very eloquent, and an excellent poet. His seve-  
“ rity was never ill-natured; he made due allow-  
“ ance for the imperfections of human nature; was

" always equal and always firm. After his death, " his very enemies acknowledged that he was the " greatest magistrate whom France had known, and " that they did not expect to see such another."

He died at Vignay, on the 13th of March 1573.

Both catholics and protestants reproached him with being a concealed protestant. Theodore Beza caused an engraving of him to be made, and a lantern with a lighted candle in it, fastened to his back ; designing to intimate by it, that l'Hôpital had seen the light, but turned his back to it, and left it for others to follow. His uniform declaration in favour of the toleration of the huguenots, his marrying his daughter to a huguenot, her subsequent conversion to calvinism, and there not being found a single expression of regret, at any of these circumstances, in his poems, which are full of domestic details, favour this supposition. On the other hand, when the cardinal of Ferrara was sent by the pope, as his ambassador to France, in 1562, one object of his mission was to procure the removal of the chancellor, on the ground of his supposed calvinism ; but, in one of his letters to cardinal Borromeo, he mentions, that, " it would be impossible to fix on l'Hôpital the " imputation of heresy ; as he was seen regularly " at mass, at confession, and at communion." The cardinal adds, that, " when he mentioned the matter " to the queen-mother she would not hear of it ; " all these imputations, she said, were the work of " a few individuals interested in his removal." Most

assuredly, his support of the jesuits against the parliament does not favour the notion of his being a calvinist; and it is observable, that under Henry the fourth, one of his grandsons was archbishop of Aix. Father Griffet, in a note to father Daniel's History of France, (tom. x. p. 626—638), refers to a letter written by l'Hôpital, in defence of the integrity of his religious principles, to pope Pius the fourth, in which, after exculpating himself from the charges brought against him, he generally submits himself “to God, and the vicar of God.” It is not likely that a concealed huguenot would use, unnecessarily, this expression.

The works of l'Hopital, which have reached us, consist of the ordonnances framed by him; of some discourses pronounced by him, and of his poems. For some time after his decease his poems could not be found; but at length they were discovered, and published by Pybrac, with the assistance of Scevola of St. Martha, and the president de Thou. In 1732, a better edition of them was published at Amsterdam, from a manuscript which had belonged to the celebrated pensionary, John de Witt.

“Under the unhappy reigns,” (says the president Henault, an. 1568), “of Francis the second, “Charles the ninth, and Henry the third, if the “nobility and the people had been abandoned to “their fanaticism, France would have fallen, if not “into its former barbarity (from which its luxury “and love of pleasure would for some time have

"perpetrated it, at least into anarchy. Who would  
 "not have thought that all was lost? But the  
 "chancellor de l'Hôpital watched over his country;  
 "in the midst of civil dissension, his hands did not  
 "speak and he heard. It never entered into his  
 "mind to doubt their power. He did reason and  
 "justify the honour of thinking that their power  
 "was greater than the power of kings; and that,  
 "when they were properly employed, they could  
 "have an irresistible effect on the things of this  
 "world. Hence proceeded the laws framed by him,  
 "the noble simplicity of which rivalled that of the  
 "laws of Rome. Hence these edicts, which by  
 "their wise provisions applied to future times, as  
 "well as to the present moment, and furnished prin-  
 "ciples for the decisions of cases which were not  
 "then foreseen; those ordinances, the strength  
 "and wisdom of which make the weakness of the  
 "reigns, in which they were enacted, be forgotten:  
 "Immortal works of a great magistrate, who equally  
 "felt the extent of his duties, and the high dignity  
 "of the place which he filled! Who knew, that  
 "when the court interfered in the exercise of his  
 "functions, it was time for him to resign; and by  
 "whose conduct, all who have sat on the same  
 "tribunal, without his courage or endowments,  
 "have been tried?

"The laws of France, which are the basis of the

"of the French nation, are the basis of the

"of the French nation, are the basis of the

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THE Avocat in France nearly resembled, in rank and function, the English Barrister. In the very earliest era of the history of France, her lawyers formed a distinguished portion of her community. Even in the reign of Tiberius, the city of Autun had schools of eloquence and law, which contained 60,000 students. In 297, they were under the direction of the orator Eumenius, with a salary of 600,000 sesterces, or about 2,880 l. of our money. The schools of Toulouse, Bourdeaux, Marseilles, Lyons, Treves, and Besançon, had the same celebrity. When the Franks possessed themselves of Gaul, they respected the profession of an avocat, and their most powerful nobles solicited the office of avoué or avocat of a religious or civil community: but, in those turbulent times, it was as much a military as a civil advocacy. The profession of avocat maintained its consideration till the division of the Francic empire among the sons of Charlemagne in 814. In the troubles, which immediately followed that event, it almost vanished; but it re-appeared to advantage in the reign of St. Louis. The parliament of France was made sedentary at Paris by Philip le Bel; and soon after this event the avocats were formed into a distinct class, with many rights and under many obligations, by the ordinances of 1327 and 1344 of Philip de Valois; but, disdaining the more common denomination of

a *body*, they assumed, in analogy to the order of the nobility, and the order of the clergy, the denomination of *l'Ordre des Avocats*. Bartoli, the oracle of the law in the fourteenth century, asserted (*ad lib. 1 cod. de professoribus*), that at the end of the tenth year of successful professional exertion, the *avocat* became *ipso facto*, a knight. A more moderate opinion assigned to him, at that period of his career, no more than a fair claim to the honour of forensic knighthood. It has not been discovered by the writer that a forensic order of knighthood was ever known in England; but in France, Italy and Germany, it was an order frequently conferred on the successful practitioner at the bar. When it was applied for, the king commissioned some ancient knight of the forensic order to admit the postulant into it. The postulant knelt before the knight-commissary, and said, "I pray you, my Lord and  
" my protector, to dress me with the sword, belt,  
" golden spur, golden collar, golden ring, and all  
" the other ornaments of a true knight. I will not  
" use the advantages of knighthood for profane purposes; I will use them only for the purposes of  
" religion, for the church, and the holy christian  
" faith, in the warfare of the science to which I am  
" devoted." The postulant then rose; and, being fully equipped, and girded with the sword, he became, for all purposes, a member of the order of knighthood, and entitled to a full participation of all the rights of military knights. In the *Memoirs*

of the Maréchal de Vielle-Ville, who died in 1571, such knights are mentioned as very common, and treated by the old Maréchal somewhat disrespectfully, though one of his own sons-in-law was a knight of that description.—It does not appear that they wore then equestrian costume in the courts; but, as Beaumanoir declares it to have been a general rule, in his time, that the *avocât*, who was followed by one horse only, should not have as large a fee as an *avocât* who was followed by two, three, four or more horses, we must suppose they were attended to the courts by esquires.

In many of the most distinguished civil and ecclesiastical events in the French history, as the two disputes on the Salic Law, the troubles of the Jacquerie, the League and the Fronde, and the disputes between pope Boniface and Philip le Bel, and the recent disputes on Jansenism, the Order of *Avocats* acted an important part.

On several occasions the Order acted in direct opposition to the crown. In general, the parliament led the way in them, and the Order fought under their banners. In these contests, when matters came to an extremity, the parliament and the *avocats* discontinued their functions. This amounted to an absolute suspension of justice, and the disputes generally terminated by the submission of the monarch.

In 1771, the parliaments, and many leading *avocats*, were banished, and new courts of justice were established. At the end of three years the king found

it necessary to recall the banished members, and restored the ancient courts.

In 1790 the French National Assembly determined on an entire new organization of the administration of justice, but were not unwilling to preserve the subsisting members of the Order of Avocats, who, with the numerous associates, whom the new order of things must necessarily give, would practice in the courts to be established for the administration of justice under the new regime. The leading avocats of Paris, after several meetings on the subject, rejected the plan. They foresaw that the new avocats would have nothing of the learning, the principles, the character, or public respect of the *order*. The public, they said, will confound the latter with the former. "To avoid such a posterity, " our only means, they said, is to suppress our name, " and our order, so that, after we shall cease to " exist, there shall be no avocat in France. Sole " depositaries of that noble state, let us not permit " it to be sullied by transmitting it to successors, " unworthy of us. We pray, therefore, for its instant " extinction."

The assembly was moved to tears by this discourse. and in compliance with it, on the 11th of September 1795, suppressed the Order of Avocats, their name, their costume, and every thing else that belonged to them. "Thus perished," says the writer, from whom these details have been extracted, "this celebrated corporation, which, under the name of



“ l'Ordre des Avocats, had counted 427 years of  
“ a brilliant existence, and the renown of which  
“ had spread over all Europe.”—*Histoire des  
Avocats au Parlement et au Bureau de Paris,  
depuis St. Louis jusqu'au 15 Octobre 1790. Par  
M. Tournel, ancien avocat au Parlement de  
Paris.*

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**SKETCH**  
**OF THE**  
**PROFESSIONAL CHARACTER**  
**OF THE**  
***EARL of MANSFIELD.***

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**N N 3**

The following Sketch of an account of Lord Mansfield's professional Life and Character, was written, by the Author of the preceding compilation, at the request of the late Mr. Seward, and inserted by him in his interesting "*Anecdotes of distinguished Persons.*"

SKETCH  
OF THE  
PROFESSIONAL CHARACTER  
OF THE  
EARL OF MANSFIELD.

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HIS Lordship was sent, at the usual age, to the university of Oxford. He applied to the study of the classics, and afterwards to the study of law, with great diligence. He told the writer, that he had translated many of Cicero's Orations into English, and then translated them back into Latin. He also mentioned, that, while he was a student in the temple, he and some other students had regular meetings to discuss legal questions; that they prepared their arguments with great care; and that he afterwards found many of them useful to him, not only at the bar, but upon the bench.

For some time after he was called to the bar, he was without any practice. There is a letter from Mr. Pope, in answer to one from him, in which he had mentioned this circumstance with good-humour.

A speech he made as counsel at the bar of the house of lords, first brought him into notice.\* Upon this,

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• To this Mr. Pope alludes in the following lines :

“ Graced as thou art, with all the power of words,  
 “ So known, so honor'd at the House of Lords.”

The second of these lines has been considered as a great falling off from the first. They were thus parodied by Colley Cibber :

“ Persuasion tips his tongue when'er he talks,  
 “ And he has chambers in the King's Bench Walks.”

To the chambers in the King's Bench Walks, Mr. Pope has an allusion in one of the least read, but not least beautiful, of his compositions, his Imitation of the first Ode of the fourth book of Horace.

“ To Number Five direct your doves,  
 “ There spread round Murray all your blooming loves ;  
 “ Noble and young, who strikes the heart  
 “ With every sprightly, every decent part :  
 “ Equal, the injur'd to defend,  
 “ To charm the mistress, or to fix the friend.  
 “ He with an hundred arts refin'd,  
 “ Shall spread thy conquest over half the kind ;  
 “ To him, each rival shall submit,  
 “ Make but his riches equal to his wit.”

The two last verses allude to an unsuccessful address made by his Lordship, in the early part of his life, to a lady of great wealth. Mr. Pope adverts to it in the following lines :

“ Shall one whom nature, learning, birth conspir'd  
 “ To form, not to admire, but be admir'd,  
 “ Sigh, while his Cloc, blind to wit and worth,  
 “ Weds the rich dulness of some son of earth ?”

business poured in upon him from all sides; and he himself has been heard to say, that he never knew the difference between a total want of employment and a gain of 3,000 *l.* a year.

He learned much of special pleading from Mr. Justice Dennison, and much of the law of title and real property from Mr. Booth. He confined his practice to the court of chancery. His command of words, and the gracefulness of his action, formed a striking contrast with the manner of speaking of some of his rivals, who were equally distinguished by the extent and depth of their legal knowledge, and their unpleasant enunciation.

After he had filled, with great applause, the offices of Solicitor, and Attorney-General, he was created Chief Justice of the King's Bench, in May 1756, on the decease of Sir Dudley Ryder. He held that high situation for two-and-thirty years. Till his time, the practice was, that the bench called on the gentlemen within the bar, to make their motions, beginning every day with the senior counsel, and then calling on the next senior in order, as long as it was convenient to the court to sit; and to proceed again in the same manner upon the next and every subsequent day, although the bar had not been half, or perhaps a quarter gone through, upon any one of the former days; so that the juniors were very often obliged to attend in vain, without being able to bring on their motions for many successive days. Lord Mansfield, to encourage

the juniors, proceeded regularly through the bar to the youngest counsel, before he would begin again with the seniors. This method was not only advantageous to the younger part of the barristers, but, as it prevented a great delay of business, was extremely advantageous to the suitors. On every other occasion, he was equally attentive to the bar and the suitors of the court.

In all he said or did, there was a happy mixture of good-nature, good-humour, elegance, ease, and dignity. His countenance was most pleasing; he had an eye of fire; and a voice perhaps unrivalled in its sweetness and the mellifluous variety of its tones. There was a similitude between his action and Mr. Garrick's; and, in the latter part of his life, his voice discovered something of that guttural quality, for which Mr. Garrick's was distinguished. He spoke slowly, sounding distinctly every letter of every word. In some instances he had a great peculiarity of pronunciation — "authority" and "attachment," two words of frequent use in the law, he always pronounced *awtawrity* and *attaichment*. His expressions were sometimes low. He did not always observe the rules of grammar. There was great confusion in his periods, very often beginning without ending them, and involving his sentences in endless parentheses; yet, such was the charm of his voice and action, and such the general beauty, propriety, and force of his expressions, that, as he spoke, all these defects passed



unnoticed. No one ever remarked them, who did not obstinately confine his attention and observation to them alone.

Among his contemporaries, he had some superiors in force, and some equals in persuasion ; but in insinuation, he was without a rival or a second. This was particularly distinguishable in his speeches from the bench. He excelled in the statement of a case. One of the first orators of the present age said of it, " that it was, of itself, worth the argument of any " other man." He divested it of all unnecessary circumstances ; brought together every circumstance of importance ; and these he placed in so striking a point of view, and connected them by observations so powerful, but which appeared to arise so naturally from the facts themselves, that frequently the hearer was convinced before the argument was opened. When he came to the argument, he shewed equal ability, but it was a mode of argument almost peculiar to himself. His statement of the case predisposed the hearers to fall into the very train of thought he wished them to take, when they should come to consider the argument. Through this he accompanied them, leading them insensibly to every observation favourable to the conclusion he wished them to draw, and diverting every objection to it ; but, all the time, keeping himself concealed ; so that the hearers thought they formed their opinions in consequence of the powers and workings of their own minds, when, in fact, it was the effect

of the most subtle argumentation and the most refined dialectic.

Some idea of lord Mansfield's cast of mind and mode of discussion, may be formed by perusing his arguments in delivering his opinion in the cases of the Mayor of Kingston-upon-Hull, *v.* Horner; Eldridge, *v.* Nott; and Hogan, *v.* Jackson, in Mr. Cowper's Reports, 102, 214, 299. Something of them appears also in the following extract of his speech in reversing Mr. Wilkes's outlawry, 2 Burr. 2561; but it should be taken into consideration, that the last evidently was either a prepared speech, or purposely corrected for the press.

After stating the general merits of the case, his lordship says,

“ But here, let me pause!—

“ It is fit to take some notice of the various terrors hung out; the numerous crowds which have attended and now attend in and about the hall, out of all reach of hearing what passes in court; and the tumults which, in other places, have shamefully insulted all order and government. Audacious addresses in print dictate to us, from those they call the people, the judgment to be given now, and afterwards upon the conviction. Reasons of policy are urged, from danger to the kingdom, by commotions and general confusion.

“ Give me leave to take the opportunity of this great and respectable audience, to let the whole world know, all such attempts are vain. Unless we

have been able to find an error which will bear us out, to reverse the outlawry ; it must be affirmed. The constitution does not allow reasons of state to influence our judgments : God forbid it should ! we must not regard political consequences ; how formidable soever they might be : if rebellion was the certain consequence, we are bound to say '*fiat justitia, ruat cælum.*' The constitution trusts the king with reasons of state and policy : he may stop prosecutions ; he may pardon offences ; it is his, to judge whether the law or the criminal should yield. We have no election. None of us encouraged or approved the commission of either of the crimes of which the defendant is convicted : none of us had any hand in his being prosecuted. As to myself, I took no part, (in another place,) in the addresses for that prosecution. We did not advise or assist the defendant to fly from justice : it was his own act ; and he must take the consequences. None of us have been consulted or had any thing to do with the present prosecution. It is not in our power, to stop it : it was not in our power, to bring it on. We cannot pardon. We are to say, what we take the law to be : if we do not speak our real opinions, we prevaricate with God and our own consciences.

“ I pass over many anonymous letters I have received. Those in print are public : and some of them have been brought judicially before the court. Whoever the writers are, they take the wrong way. I will do my duty, unawed. What am I to fear ?

That *menda infamia* from the press, which daily coins false facts and false motives? The lies of calumny carry no terror to me. I trust, that my temper of mind, and the colour and conduct of my life, have given me a suit of armour against these arrows. If, during this king's reign, I have ever supported his government, and assisted his measures; I have done it without any other reward, than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves: without mixing in party or faction, and without any collateral views. I honour the king; and respect the people: but, many things acquired by the favour of either, are in my account, objects not worth ambition. I wish popularity: but, it is that popularity which follows; not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends, by noble means. I will not do that which my conscience tells me is wrong, upon this occasion; to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right; though I should draw on me the whole artillery of libels; all that falsehood and malice can invent, or the credulity of a deluded populace can swallow. I can say, with a great magistrate, upon an occasion and under circumstances not unlike, '*Ego hoc animo semper fui, ut invidiam, virtutis partem, gloriam, non invidiam, putarem.*'

“ The threats go further than abuse : personal violence is denounced. I do not believe it : it is not the genius of the worst men of this country, in the worst of times. But I have set my mind at rest. The last end that can happen to any man, never comes too soon, if he falls in support of the law and liberty of his country : (for, liberty is synonymous to law and government.) Such a shock, too, might be productive of public good : it might awake the better part of the kingdom out of that lethargy which seems to have benumbed them ; and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety.

“ Once for all, let it be understood, ‘ that no ‘ endeavours of this kind will influence any man ‘ who at present sits here.’ If they had any effect, it would be contrary to their intent : leaning against their impression, might give a bias the other way. But I hope, and I know, that I have fortitude enough to resist even that weakness. No libels, no threats, nothing that has happened, nothing that can happen, will weigh a feather against allowing the defendant, upon this and every other question, not only the whole advantage he is intitled to from substantial law and justice ; but every benefit from the most critical nicety of form, which any other defendant could claim under the like objection. The only effect I feel, is an anxiety to be able to explain the grounds upon which we proceed ; so as to satisfy all mankind ‘ that a flaw of form given

‘ way to in this case, could not have been got over  
‘ in any other.’ ”

His lordship frequently enlivened the tedium of a cause with sallies of good-humoured wit. He was sometimes happy in them. A Jew of a very bad character, but covered with gold lace, was brought before him to justify bail for fifty pounds. The counsel asked him the usual question, if he were worth fifty pounds, after all his just debts were paid. “ Why do you ask him that question ? ” said his lordship : “ don’t you see he would burn for twice “ the sum ? ”

But it was not by oratory alone, that he was distinguished : in many parts of our law he established a wise and complete system of jurisprudence. His decisions have had a considerable influence in fixing some of those rules which are called the land-marks of real property. The law of insurance, and the poor laws (particularly so far as respects the law of parochial settlements), are almost entirely founded on his determinations. It has been objected to him, that he introduced too much equity into his court. It is not easy to answer so general an observation ; it may, however, be observed, that it is as wrong to suppose a court of law is to judge without equity, as to suppose a court of equity is not bound by law : and, when Mr. Justice Blackstone informs us, † that, under the ancient provisions of the second statute

• † Com. vol. iii. 435.

of Westminster, the courts of law were furnished with powers, which might have effectually answered all the purposes of a court of equity, except that of obtaining a discovery by the party's oath, there cannot, it should seem, be much ground for such an accusation.

His lordship was sometimes charged with not entertaining the high notions which, Englishmen feel, and it is hoped will ever feel, of the excellence of the trial by jury. Upon what, this charge is founded does not appear : between him and his jury there never was the slightest difference of opinion. He treated them with unvaried attention, and respect ; they always shewed him the utmost deference. It is remembered, that no part of his office was so agreeable to him as attending the trials at Guildhall. It was objected to him, that, in matters of libel, he thought the judges were to decide on its criminality. If his opinions on this subject were erroneous, the error was common to him with some of the most eminent among the ancient and modern lawyers. It was also objected to him, that he preferred the civil law to the law of England. His citations from the civilians were brought as a proof of his supposed partiality to that law : but they were rather occasional than frequent ; and he seldom introduced them where the case was not of a new impression, so that the scantiness of home materials necessarily led him to avail himself of foreign ware. Sometimes, however, he intimated an opinion, that the

modification of real property in England, in wills and settlements, was of too intricate and complex a nature, and for that reason inferior to the more simple system of the Roman usufruct. The frequent necessity there is in our law to call in trustees, whenever property is to be transmitted or charged, so as to be taken out of immediate commerce, appeared to him an imperfection ; and he wished the nature of our jurisprudence permitted the adoption of the rule of the civil law, that, when a debt is extinguished, the estate or interest of the creditor, in the lands or other property mortgaged for its security, is extinguished with it. It will be difficult to shew any other instance in which he preferred the civil law to the law of England.

In a conversation he permitted a student at the English bar to have with him, he expressed himself in terms of great esteem for Littleton, but spoke of lord Coke, particularly of " his attempting to give " reasons for every thing" (that was his phrase) with great disrespect. He mentioned lord Hardwicke in terms of admiration and of the warmest friendship : " When his lordship pronounced his " decrees, wisdom herself," he said, " might be " supposed to speak."

He observed with great satisfaction, that during the long period of his chief-justiceship, there had been but one case in which he had ultimately differed with his brother judges of the same court. That was the case of Perryn against Blake. He lamented



the difference, but declared his conviction, that the opinion he delivered upon it was right.

He recommended Saunders' Reports. He observed, that the quantity of professional reading absolutely necessary, or even really useful, to a lawyer, was not so great as was usually imagined ; but, he observed, " that it was essential he should " read much," as he termed it, " in his own defence ; lest, by appearing ignorant on subjects " which did not relate to his particular branch of " the profession, his ignorance of that particular " branch might be inferred."

Speaking of the great increase of the number of law books, he remarked, that it did not increase the quantity of necessary reading, as the new publications frequently made the reading of the former publications unnecessary. Thus, he said, since Mr. Justice Blackstone had published his Commentaries, no one thought of reading Wood's Institutes or Finch's Law, which, till then, were the first books usually put into the hands of students. He said that when he was young, few persons would confess they had not read a considerable part, at least, of the year books ; but that, at the time he was then speaking, few persons would pretend to more than an occasional recourse to them in very particular cases. He warmly recommended the part of Giannone's History of Naples, which gives the history of jurisprudence, and of the disputes between the church and the state. He men-

tioned Chillingworth as a perfect model of argumentation.

In the fundamental principles, either of the constitution or the jurisprudence of this country, no one dreaded innovation more than he did. His speech on the case of Eltham Allen shews his notions on the great subject of toleration. It was published by Dr. Furneaux. He was the first judge who openly discountenanced prosecutions on the popery laws. His charge to the jury, in the case of Mr. James Webb, a roman-catholic priest, tried in 1768 for saying mass, is printed from the notes of the short-hand writer, in a life of Dr. Challoner, a roman-catholic bishop, by Mr. James Barnard.

To these may be added, a speech against the suspending and dispensing prerogative, printed in Mr. Almon's collection. It is an invaluable composition, and presents, perhaps, the clearest notions that have yet appeared in print, of this mysterious and delicate part of the law. Much of his manner of arguing, and his turn of expression, is discoverable in it. It cannot, however, be considered as his genuine speech : it is at least three times the size of the speech really delivered by him. He obtained by it a complete triumph over Lord Camden and Lord Chatham.

Though he was so far a friend to toleration, as not to wish for an extension of the laws enacted against dissenters, or to wish the existing laws

rigidly enforced against them, yet he was a friend to the corporation and test laws, and considered them as bulwarks of the constitution, which it might be dangerous to remove. On every occasion he reprobated the discussion of abstract principles, and inculcated the maxim, that the exchange of the well for the better was a dangerous experiment, and scarcely ever to be hazarded.

Some time after the commencement of the French revolution, he was asked, where he thought it would end? He said, he feared it was not begun.—To a person who enquired of him, what he supposed would be the ultimate issue of it; he said, it was an event without precedent, and therefore without prognostic.

It has been argued, that his knowledge of the law was by no means profound, and that his great professional eminence was owing more to his oratory than to his knowledge. This was an early charge against him. Mr. Pope alludes to it in these lines:

The Temple late two brother Sergeants saw,  
Who deemed each other oracles of law;  
Each had a gravity would make you split,  
And shook his head at Murray as a wit.

*Imitations of Horace, book ii. epist. ii.*

Perhaps the opinion was founded on the notion which many entertain, that the study of the polite arts is incompatible with a profound knowledge of

the law ; not recollecting, that the human mind necessarily requires some relaxation, and that a change of study is the greatest and most natural of all relaxations, to a mind engaged in professional pursuits. Besides—the *commune vinculum* between all branches of learning, preserves the habits of application, of thinking, and of judging, which are lost in the modes of dissipation usually resorted to for relaxation. The Chancellor d'Aguessseau,\* and even the stern du Moulin, were eminently distinguished by their general literature. Lord Bacon's various and profound knowledge is universally known ; and many works of Lord Hale are published, which shew, that to the deepest and most extensive knowledge of all the branches of the law, the constitution, and the antiquities of his country, he united a general acquaintance with the history of other nations ; that he had given much of his time to the study of theology ; that he occasionally sacrificed to the muses, and spent some time in the curious and instructive amusements of experimental philosophy. It was late in life, that Lord Hardwicke took up the study of polite literature, but he afterwards pursued it with great earnestness. His son, Lord Chancellor Yorke, always called himself a fugitive from the muses ; and, amidst his vast variety of occupation, still found time to converse with them. Each of these

\* This great magistrate used to say, "*Le changement d'étude est toujours un délassement pour moi.*"

great men might have said with Cicero, "*Quis tandem me reprehendat, aut quis mihi jure succenseat, si quantum cæteri, ad suas res obundas, quantum ad festos dies ludorum celebrandos, quantum ad alias voluptates, et ad ipsam requiem animi et corporis conceditur temporis; quantum alii tribuunt tempestivis convivis, quantum denique aleæ, quantum pilæ, tantum mihi egomet, ad hæc studia recollenda sumptu sero.*"

To decide on his lordship's knowledge of the law, a serious perusal of his arguments, as counsel, in Mr. Atkyns's reports, and of his speeches, as judge, in Sir James Burrow's, Mr. Douglas', and Mr. Cowper's Reports, is absolutely necessary. If the former be compared with the arguments of his contemporaries, many of whom were men of the profoundest knowledge that ever appeared at the Chancery bar, it will not be discovered, that in learning or research, in application of principles or in recollection of cases, his arguments are anywise inferior to those of the most eminent among them. Neither will he suffer by the comparison, if his speeches in giving his judgments from the bench, are compared with those of the counsel at the bar. It is easy to imagine, that, on some one occasion, a judge, with his lordship's mental endowments, by a particular application to the learning immediately referrible to the case in question, and by con-

sulting with persons eminently skilled in that particular branch of legal lore, may, with a very small stock of real knowledge of his own, express himself with a great appearance of extensive and recondite erudition. This, however, can be the case but seldom, the calls upon a chief justice of the King's Bench for a full exertion of all his natural and acquired endowments being incessant. There is hardly a day of business in his court, in which a disclosure of his knowledge, or of his want of it, is not forced from him.

Considering his lordship's decisions separately, it will appear, that on all occasions he was perfectly master of the case before him, and apprised of every principle of law, and every adjudication of the courts, immediately or remotely applicable to it. Considering them collectively, they will be found to form a complete code of jurisprudence on some of the most important branches of our law: a system founded on principles equally liberal and just, admirably suited to the genius and circumstances of the age, and happily blending the venerable doctrines of the old law with the learning and refinement of modern times; the work of a mind nobly gifted by nature, and informed with every kind of learning which could serve for use and ornament.

It was not on great occasions only, that his lordship's talents were conspicuous: they were

equally discoverable in the common business of the courts. *Par negotiis neque supra*,\* was never more applicable than to the discernment, perseverance, abilities, and good-humour with which he conducted himself in that part of his office. The late Earl of Sandwich said of him, “ that his talents  
“ were more for common use, and more at his finger  
“ ends, than those of any other person he had  
“ known.” But his highest praise is, that his private virtues were allowed by all, and his personal integrity was never called in question.

A memorable event in his Lordship’s life, is the destruction of his house and papers, in the riots of 1780. The following account of it is given, by Mr. Douglas, now Lord Glenbervie, in his “ Re-  
“ ports of Cases adjudged and determined in the  
“ King’s Bench, in the 19th, 20th, and 21st years  
“ of the reign of George the Third.”

“ In the night between Tuesday the 6th, and Wednesday the 7th of June, Lord Mansfield’s house, in Bloomsbury-square, was attacked by the rioters, who, on the Friday and Tuesday, to the amount of many thousands, had surrounded the avenues to the houses of parliament, under pretence of attending Lord George Gordon, when he presented the petition from the protestant association. Lord Mansfield acted at that time as Speaker of the House of Lords, in the absence of the Lord Chancellor, who was ill. On the Tuesday evening, the

\* Tacitus, in *Vita Agricolaë*.

prison of Newgate had been thrown open, all the combustible part reduced to ashes, and the felons let loose upon the public. It was after this attempt to destroy the means of securing the victims of criminal justice, that the rioters assaulted the residence of the chief magistrate of the first criminal court in the kingdom ; nor were they dispersed till they had burnt all the furniture, pictures, books, manuscripts, deeds, and, in short, every thing which fire could consume in his lordship's house ; so that nothing remained but the walls ; which were seen the next morning almost red hot, from the violence of the flames, presenting a melancholy and awful ruin to the eyes of the passengers.

The amount of that part of Lord Mansfield's loss which might have been estimated, and was capable of a compensation in money, is known to have been very great. This he had a right to recover against the Hundred. Many others have taken that course ; but his lordship thought it more consistent with the dignity of his character, not to resort to the indemnification provided by the legislature. His sentiments on the subject of a reparation from the state were communicated to the board of works, in a letter written in consequence of an application which they had made to him, (as one of the principal sufferers,) pursuant to directions from the treasury, founded on a vote of the House of Commons, requesting him to state the nature and amount of his loss. In that letter, after some introductory



expressions of civility to the surveyor general, to whom it was addressed, his lordship says,

“ Besides what is irreparable, my pecuniary loss  
“ is great. I apprehended no danger, and therefore  
“ took no precaution. But how great soever that  
“ loss may be, I think it does not become me to  
“ claim or expect reparation from the state. I have  
“ made up my mind to my misfortune as I ought :  
“ with this consolation, that it came from those  
“ whose object manifestly was general confusion  
“ and destruction at home, in addition to a dan-  
“ gerous and complicated war abroad. If I should  
“ lay before you any account or computation of the  
“ pecuniary damage I have sustained, it might seem  
“ a claim or expectation of being indemnified.  
“ Therefore you will have no further trouble upon  
“ this subject from, &c.

“ MANSFIELD.”

On Wednesday, the devastation became almost general throughout London. The houses of many of the most respectable individuals had been previously attacked : that evening, the Fleet and King's Bench prisons were set on fire ; the bank of England, the Inns of Court, almost all the public buildings were threatened with destruction ; and an universal conflagration must have taken place, if the king had not issued a proclamation for the speedy and effectual interposition of the military power. Till then, the soldiery had scarcely dared to act of-

fensively ; the ordinary magistrates were, for the most part, deterred, or prevented by various causes, from giving their sanction to the employment of the troops ; and, in many places, the men under arms, with their officers at their head, though drawn up in military order, did nothing more than preserve a space between the incendiaries and the crowd of spectators, so as to have the effect of enabling the former to demolish the houses and property of their fellow subjects without interruption.

The courts of justice continued, on the Wednesday, to sit, in order to do the business of course ; but almost every where else, except in Westminster Hall, the rioters seemed, that day, to have obtained a complete mastery, and a real anarchy pervaded all parts of the metropolis. The execution done by the troops on the night between the Wednesday and Thursday, though very few lives were sacrificed, produced a happy revolution. The numerous bands of rioters had entirely vanished on the Thursday afternoon ; scarce a single badge of the protestant association, (which was a blue cockade, and which all the rioters wore,) was to be seen ; and the total suppression of this insurrection, in its circumstances without example in the history of Europe, was as sudden as its rise. The encampment of large bodies of the army and militia in and near London for several months, prevented the renewal of the commotions there ; and, although a scene of the same sort took place a few days afterwards at Bath, and

was commenced, or expected, in other parts of England, similar precautions entirely extinguished, not only all danger, but all apprehension, in the space of a few weeks."

His lordship resigned his office on the 3d of June, 1788.

Soon after his lordship's resignation was signified, the following letter was sent to him. It was signed by the counsel of the King's Bench bar, who had practised in the court during his lordship's administration :

" TO THE EARL OF MANSFIELD.

" My Lord,

" It was our wish to have waited  
" personally upon your lordship in a body, to have  
" taken our public leave of you on your retiring  
" from the office of chief justice of England ; but,  
" judging of your lordship's feelings upon such an  
" occasion by our own, and considering besides  
" that our numbers might be inconvenient, we de-  
" sire in this manner affectionately to assure your  
" lordship, that we regret, with a just sensibility,  
" the loss of a magistrate whose conspicuous and  
" exalted talents conferred dignity upon the pro-  
" fession, whose enlightened and regular admini-  
" stration of justice made its duties less difficult and  
" laborious, and whose manners rendered them  
" pleasant and respectable.

“ But while we lament our loss, we remember  
 “ with peculiar satisfaction, that your lordship is not  
 “ cut off from us by the sudden stroke of painful dis-  
 “ temper, or the more distressing ebb of those ex-  
 “ traordinary faculties which have so long distin-  
 “ guished you amongst men ; but that it has pleased  
 “ God to allow to the evening of an useful and il-  
 “ lustrious life the purest enjoyments which nature  
 “ has ever allotted to it ; the unclouded reflections  
 “ of a superior and unfading mind over its varied  
 “ events ; and the happy consciousness that it has  
 “ been faithfully and eminently devoted to the high-  
 “ est duties of human society, in the most distin-  
 “ guished nation upon earth.

“ May the season of this high satisfaction bear  
 “ its proportion to the lengthened days of your ac-  
 “ tivity and strength.

“ (Signed.) ”

The letter thus signed, being transmitted to the  
 venerable earl by Mr. Erskine, at the desire of Mr.  
 Bearcroft, the senior of that bar, and the rest of the  
 gentlemen who had thus subscribed it, his lordship,  
 without detaining the servant five minutes, returned  
 the following answer :

“ TO THE HONOURABLE T. ERSKINE,  
 “ SERJEANT’S-INN.

“ Dear sir,

“ I cannot but be extremely flattered  
 “ by the letter which I this moment have the honor  
 “ to receive.

“ If I have given satisfaction, it is owing to the  
“ learning and candour of the bar ; the liberality  
“ and integrity of their practice, freed the judicial  
“ investigation of truth and justice from difficulties.  
“ The memory of the assistance I have received from  
“ them, and the deep impression which the extra-  
“ ordinary mark they have now given me of their  
“ approbation and affection has made upon my mind,  
“ will be a source of perpetual consolation in my de-  
“ cline of life, under the pressure of bodily infir-  
“ mities, which made it my duty to retire.

“ I am, dear sir, with gratitude to  
“ You and the other Gentlemen,  
“ Your most affectionate  
“ And obliged humble servant,

“ MANSFIELD.”

“ Caen Wood,  
“ June 18, 1788.”

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